A New and Complete Law-Dictionary,

OR,

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, Attorneys, Solicitors, &c.

By T. CUNNINGHAM, Esq.

In TWO VOLUMES.

VOL. II.

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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 maker of fray, 5 & 6 Ed. 6, cap. 4.

Fabric-lands, Are lands given to the rebuilding, repair, or maintenance of cathedrals, or other churches, and mentioned in the act of Obtusion, 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 there were called fabric-lands, because given ad fabricam ecclesiæ reparandum. In Dei nomine Amœ, &c. Die Veneris ante fefiam nativitatis Sancti Johannis Baptistæ, Anno Domini 1423. Ego Richardus Smith de Bromyard confo tejamentum meum in hunc modum, Imprimis lego aniam meam Deo et beatae Mariae, & omnibus sanctis, corpore et meme sejelimendum in Caensterte beatae Edurbæ de Bradway. Item lego fabricam ecclesiæ cathedralis Hereford xii d. Item lego fabricæ capellæ beatae Mariae de Bromyard xld. Item lego Fadrauhs de Woodb LCXX, rubrae sunt honora, &c. Thes fabric-lands the Saxons called timberlows. Cowell, edit. 1737.


Fators. As no one person, whole trade is extensive, can tranfæ all his own affairs; so it is necery for him to depute another in his place, on whose ability and honesty he can rely; and such person fo deputed is called a factor, who is in nature of a servant, whose acts shall bind his master or principal, so far as he acts pursuant to the authority given him. Melly 421.

If the commission be general, as to disposes, do, and deal therein as if it were your own, hereby the factor is excused if a loss happens; but if the commission be to sell and disposes, hereby the factor is not enabled to sell upon tick, nor can he sell 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 disposes of. Melly 422. 1 Bulst. 103.

If in account the defendant pleads before auditors, that the goods for which he is to account were bona perdita, and notwithstanding his care in keeping them were lost, and that they remained in his hands for want of buyers, and were in danger of growing worse, and that therefore he sold them upon credit to a man beyond sea; this is no good plea, for a factor cannot sell, even bona perdita, upon credit, without a particular commission to do. 2 Mist. 100.

In favour of trade and merchandise, an action of account lies at common law against a factor as against a bailiff, in which he shall have all reasonable allowances. 9 Ca. 50, b. 172, a. 11 Ca. 50, a. 2 Rel. Abr. 161.

Also, if a man by obligation acknowledges that he has received money ad proficiendum & comitandum, the obligee may either sue the bond, or have an action of account at his election. 1 Rel. Abr. 118. Dyer 20. Cr. Eliz. 644.

If goods are configned to a factor, 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 factor must inevitably make good, unless his commission 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. Melly 423. Cr. Fac. 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 must have answered the value of them. 1 Chn. Ca. 25.

But if a home factor be brought to an account, he shall not be allowed the customs, unless he swear he hath paid them; because it was 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 Chn. 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. Melly 423.

But if A. being possessed of certain artificial and counterfeit jewels of the value of 160 l. and knowing them to be such delivers them to B. his servant, 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, but gives B. no charge to conceal their being counterfeit, and thereupon B. goes into Barbary, and knowing these jewels to be counterfeit, sells them to C. for good and true jewels, and affirming to C. that they are worth 810 l. defiles C. to sell them to the said King; whereupon C. does sell 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 imprisoned by the said King, till he repays.
repays the $1000 out of his own effects; of which all which
matter C gives notice to A, and demands satisfaction,
C's last action being against 2 others for suits in
terference, an action which gave value, and B, was not by A, par-
ticularly directed to C, and all not was done good,
C was the voluntary act of the tenant, for which the matter
is not bound to answer. 1 Esq. 152, 156, 2 Esq. 493, 2; 2 Rec. 553, 29. P. 88, 13.

It hath been ruled in equity, that where a factor employs a
factor's goods in a business with the disposal of merchandise,
and the factor receives the money, and dies indebted
for debts of a higher nature, and it appears by evidence,
that this money was sold in other goods, and remains unpaid, those goods shall be taken as part of the merchant's estate, and not the factor's; but if the factor have the money, he shall be looked upon as the factor's estate,
and must first answer the debts of superior creditors, \( \text{Eq.} \) for as money has no ear-mark, equity can't follow that in behalf of him who employed the factor.

1 Sack. 162.

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, he specially more than his affairs will pay; this money shall be paid to A, and not to the administrator of B, as part of his affairs, but thereout must be deducted what was due to B, for commination; for a factor is in nature only of a trustee for his principal. 2 Term. 638.

The plaintiff being a factor in Blackwell-Hall, and
value for the goods, and at the principal, relying, on the credit of clothists reposing 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 disallowed; and if there be debts of a higher nature, it would be a dangerous proceeding in the administrator to pay or discount the plaintiff's debts. 2 Term. 117.

Where a factor at the Canaries2 owes money for factorage, he cannot bring an action for his factorage, unless the principal refers to come to an account; and if it appears that the factor has money in his hands, he may detain, and cannot bring an action for his factorage; but if he was 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. Comb. 349. Hereford v. Pettell.

Where a factor or agent of the African company had deposited his accounts 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 he left them with the successor, which should conclude the matter. Add. 31 Cor. 2. 2 Chanc. Cof. 11. 14. Mulford v. African Company and Editor. 32 Cor. 2. 2 Chanc. Cof. 56. 58. Dowsett v. Islan.

A factor took a bond in his own name, and died, and the obligor having failed, a bill was brought against his son for an account; the Lord Chancellor put the bill to prove that his father the testator gave particular notice to the plaintiff that he would be trusted, and to whom. 20. Trin. 33 Cor. 2. 2 Chanc. Cof. 56. 58. Dowsett v. Islan.

Where goods are held by a factor at his own risk, the vendee is not answerable to the owner. Stran. 1182.

See Factor and Receipt.

Payment, Is the wages or allowance paid and made to a factor by the merchant. The gain of factorage is certain, however the factor receives profit to the merchant; but the commutation and allowances vary according to the customs and dilatation of the countries, in the several places where factors are resident: In the High-Pistles, the commu-

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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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 been useless, 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, as it was 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 as good as one determinate act; but where the deputy doth any thing by virtue of a general delegation, 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, cap. 21. Crus. Eliz. 501. Armingr v. Holland. See Pluralities.

Felicissimi, etc. V. Val. Non Rex, non judae possit regnare; nesci subiectes hominum, non quos dicit studium felicius, nesci qui acceptores portant vel faluentes, &c. Chars. Cenulphi Regis Mecitorum in anno 821. In Monast. Anglican. tom. 1. p. 100. De Firma renders this word Hominis commendati soffillii, et sine fasting, commendatus, ut man, bene: And says, Habentis idem voluit ac destines. But fasting-men and hobesites hominum mean rather pledges, sureties, or bondsmen, which by Saxone customs were full bound to answer for one another's peaceable behaviour. Couw. edit. 1727.

Fag, A knot of excrescence in cloth. 'Tis used in the sense in the lat. 4 Ed. 4. cap. 1. from the Sax. faction, interwallon.

Faggot, A badge wore in times of popery on the sleeve of the upper garment of those who had recanted and abjured what the then powers called heresy. For those poor terrified wretches were not only condemned to the penalties of heresy, but a faggot to such an appointed place of torment. They wore, or in the schoolmen they were to have the sign of a faggot embroidered on one, and sometimes on each sleeve. And the leaving off this badge or faggot was often alleged as the sign of apostacy. Couw. edit. 1727.

Faba, i. e. Malice or deadly feed. Leg. H. i. cap. 8. v. 14. The base, factio, iniquita.

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 avers to prove it by the record; but the plaintiff, faith, nul titel 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 formed in defendant, a fine with proclamations levied anno 30 H. 8. was pleaded, and upon an issue of nul titel 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 Egster term before, and in Michaelmas term after were right, and the year of the King was express'd in them, therefore the other were held to be right, for it must be in the same year. Dyer 234.

In the defendant pleaded, that the plaintiff was outlawed; the plaintiff replied nul titel record, and being at issue thereon, the tenant was brought in by mitimus, by which it appeared, that there was a variance between the day of the return of the exsent, and that where the outlawry was pronounced; and this was held a failure of the record. Dyer 187.

In alleg, the tenant pleaded, that before that time the now demandant had brought an alleg against his father: who pleaded, that the demandant had made a settlement to him, and the said settlement nul titel record, and upon that issue the tenant brought in the record, by which it appeared, that the alleg was brought against his father and mother; adjudged, that this variance did not make a failure of the record in Pijser and Fasten's cafe. Hdb. 55.

For making a new demandant, the defendant pleaded in bar a common recovery of the faini matter against the donee in title, who replied nul titel record, and being at issue, the defendant brought in the record, by which it appeared, that the recovery was of the manner of lvi, instead of lvi; 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. Cask's cafe.

In debt upon an escheat, 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 nul titel 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 processes; but yet, because the plaint, count, and judgment certified, did agree with the plaintiff's declaration; adjudged, those variances made no failure. Hdb. 179. Coachman v. Hally. Upon appeal, the defendant did undertake another information exhibited against him the 28th of April 1794. In the Exchequer, for the fine offence; the plaintiff replied nul titel 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. Hdb. 209. Part v. Paris.

In alleg, the defendant pleaded, that the plaintiff was outlawed, the plaintiff replied nul titel record, and being at issue, the defendant brought in the tenant by mitimus; adjudged, this was a failure of the record. Dyer 187.

The defendant pleaded that the plaintiff was outlawed, who replied nul titel 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, without any flaw, but that of the King's Bench; adjudged, 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 damnimini plaited, the plaintiff replied, that he was not in any way concerned in the judgment against him, that was made on a plaint in London; the defendant rejoined nul titel record, and being at issue, the plaintiff at the day brought in the tenant by mitimus; adjudged, a failure of the record. Dyer 187.

In an information against the defendant for recusancy, he pleaded, that he was indicted in Middlesex for the same offence; the plaintiff replied nul titel record, and being at issue, the defendant took out a certiorari directed to the justices of peace, and at the day brought in the tenant of the record, certified by the certiorari by mitimus; 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. Hdb. 135. Plea versus Thrill. Antea Certiorari (B. J.). S. C.

In auditio queriel the plaintiff set forth, that he was taken in error, and that the tenant was a copyhold sequestrum on an outlawry after judgment, and that the sheriff suffered him to escape; the defendant pleaded, that after the escape, and before the auditio queriel brought, the outlawry was reversed for error, and so nul titel record. 8 Rep. 142. in Dr. Drury's cafe.

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A recog-
A recognition with condition will not vouch a recognition pleaded single, on real iel record. 1 Lord Raym. 84.

3. Fair action. (Fr. Feinte.) Is a stained 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 falsé action is whereby the words of the writ are falsé. Co/ on Litit. ref. 301. yet sometimes they are true.

4. Fair-teins, (from the Fr. Feinte, falso) Signifies a false, covetous, or collusive manner of pleading, to the deceit of a third party, Crowell. See Pleating.

Fair pleading. See Beaupean.

5. Fairs and markets. Fair, (Fr. foire, Lat. munitio) A solemn or greater fort of markets, granted to any town, to secure 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 misled or arrested in it for any other debt, than what was first contracted in the same, or at least was promised by being paid there. Crowell.

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 invited 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 want, at a particular mart, without that trouble and toils of time, which must necessitously 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 Ed. 2. 3. 123.

And if therefore if any person fears 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. 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 same may be recalled by foul facias; for though such 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. 222.

So where a writ of ad quod damnum is deceitfully 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 Rotherker, 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 date, and thirty miles from Rotherker, without notice to the mayor, &c. of Rotherker, and the patent obtained thereupon was recalled by foul facias. 3. 220, 221. 2 Vend. 344. S. C.

Replevin. The question was upon the pleading between the Earl of Nottingham and the corporation of Downton, whether the King can grant a fair within the dukedom of Lancaster, and out of the county of palatine the Great Seal of England? And after several arguments at bar, it was adjudged, Pajeb. 10 Will. 3. C. B. 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. Nor 167. the cafe of Saffren Walden. Ref. Anim. 324. Square, imp. 3.

3. 220, 221. 2 Vend. 344. S. C.
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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 ascertained, "That the said merchants, after the said time, shall close their booths and stalls, without putting any manner of ware or merchandize to sell there; and if it be found that any merchant from henceforth fell away ware or merchandize at the said fairs, after the said time, such merchant 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 that which shall be lost 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 purport, a court of record, called a court of piepowder, according thereto, for taking in and holding the fair, for the benefit of his subjects, and for the supporting and maintaining of the fair or market.

2 Inst. 220.

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 fair to keep a register of all the buying and selling, and for his duty herein can only take his reasonable and just fees. See 4 Inst. 274. f. 33.

Fairs and markets are such franchises as may be forfeited, as if the owners of them held them contrary to their charter, as by granting too long a time, than the charter admits, by dilater, and by extorting fees and duties where none are due, or more than justly due. 2 Inst. 220. 1 John 164.

Toll payable at a fair or market is a reasonable sum of money due to the owner of the fair or market, upon sale of things sold within the fair or market, or for stalls, package, or the like. 2 Inst. 222. 2 John 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 have none, and such fair or market is counted a free fair or market. C. 9. Eliz. 558. 2 Inst. 220. 2 S. P. 1 John 1356. S. P. resolved.

Also if the King, at the time he grants a fair or market, grants a toll, and the owner is outrageous and excessive, the grant of the toll is void, and the fair becomes a free fair or market. 2 Inst. 220. 2 John 1356. 2 Inst. 220. 2 S. P. 1 John 1356. 2 Inst. 220. 1 John 1356.

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 to it from those who trade and merchandize in such fair or market. 2 Inst. 221.

No toll shall be paid for any thing brought to the fair or market, before the fair is open, unless it be by custom time out of mind, and upon such fair 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 Inst. 221.

And by Wylm. 1. cap. 31. "Teaching them that take outrageous toll, contrary to the common custom of the realm in market towns, it is provided, that if any do so 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 same be done by the lord of the town, the King shall do in like manner; and if it do appear by a bill, or any mean officer, without the commandment of his lord, he shall reforo 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

refuses, an action on the cafe lies against him. 1 Rol. 153, 144, 146. But see 3 Lev. 400. where this point is doubted, because toll is quirt a debt, for which debt or an affirmans lies.

If goods be taken into a market, the owner of the ground cannot disclaim them damage feasent, because fallage, &c. is not tendered; as appears from the following case. — The plaintiff brought an action of trespass, for taking with force and arms 7 Aug. 1731. his goods and chattels, viz. 100 buffaloes of beans, 20 cabbages, &c. at Gofport in the county of Northampton, and carried them away, to his damage of 40l. The defendants pleaded Not guilty; upon which it was joined; and as to the rest of the trespass they justified, as bailiffs to Richard Lord bishop of Winchester, the taking the beans, &c. in a piece of ground called The Market-Place, at Gofport in the said county of Northampton, upon any of him blessed, and then and there damage feasent, as a diffeus, &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 fairs to be held Thursday, Friday, and Saturday, in every week for ever at Gofport aforesaid, for the purposes of buying and selling fish, filth, 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. There he fets our, that before the time when, &c. v. supra, the said fair at Gofport was called The Market-Place, was held by the bishop of Winchester by virtue of the said letters patent; and that the plaintiff before the time when, &c. to wit, upon the said Saturday the 7th of August, 1731, did bring into the said piece of ground called The Market-Place at Gofport aforesaid, into the said market place there aforesaid he did, the goods in the declaration, being goods commonly bought and sold in markets, to expose them to sale and to sell them; and the said goods in the said piece of ground in the market there then held did expose 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 market fair, did so aforesaid hold, the said goods in the said piece of ground in the said market fair as aforesaid exposed to sale, took and carried away, &c. The defendants, after having prayed and bid over the goods, and appointed a replevin, but the market was carried into the said piece of ground called The Market-Place into the said market place there held and to be held, to lay them upon the ground there, and to expose them to sale and fell them in the said market, without payment of any toll for the same, and absolutely refused to pay any thing for the same, whereas the plaintiff, the defendants as bailiffs of the said bailiff of Winchester at Gofport aforesaid, requisitioned the plaintiff to carry his 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 so; per quod the defendants, a bailiff of the said bailiff of Winchester the said goods, then and there took damage feasent as a defiuse for the damage and improvements, &c. To this rejoinder the plaintiff demurred specially, and the defendants joined in demurrer. Mr. Draper for the plaintiff argued, that judgment ought to be given for him, because it appears by the declaration, that the plaintiffs所带来的 goods and chattels mentioned in the declaration were reasonable goods and chattels to be exposed there to sale and to tell 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, not can the owner
of the market dilate them damage.foam. Crn. Eliz. 75. The Mayor of Lavenfield’s cafe; and Crn. Ely. 688. Souyer v. Wilkins; where it was held by the court, that the ox-hire went into the London-market and fofd; could not be taken for damage.foam. And as to the matter infulted upon the rejinder by the defendants, that they took the goods for not paying of toll; Mr. Draper infulted, that the rejinder could not be supported, because they did not, that any and what toll was due, which ought to be let out, that the court may judge whether the toll was reasonable. 2 Inf. 222. And that toll was only payable by the buyer without special custom, which was not pretended in this cafe. 2 Inf. 220, 221. 2 Latue. 1329, 1336. Light v. Pym; nor that any toll was demanded by the defendants of the plaintiff in particular. And Mr. Serjeant Belfield, who was counsel for the defendants, gave up the rejinder as nought, and not to be maintained; but then he took exceptions to the replication, that that had not avoided the matter pleaded in bar, because he infulted upon it that the plaintiff ought to pay fllage, or flew that he had tendered it, otherwise he could not bring his goods into the market; and cert, 1 Inf. 111. R. R. Not coutably open their fhips to fell their goods in the fair, but fllage is due for it, for they cannot take any benefit of the fair without paying the duties which belong to him that produces the goods; but it is a package in saying, the toll in the fair or market, More 474. Huddy v. Wheelbife: and therefore it appearing by the defendant’s plea, that the place, &c. was the bishop of Winchester’s frehold, and that the plaintiff brought his goods into the market; yet since it did not appear, that he had paid or tendered fllage, the defendant was generally to take them as a diftiffs for damage.foam; for the plaintiff was thereby become a trepfler ab initio. But to this Mr. Draper for the plaintiff answered, that the defendants have no where flown, fllage was demanded and refused, but rely onl only upon non-payment of toll in their rejinder; and farther, that if it was due and demanded, yet the not paying it would not make the plaintiff a trepfler ab initio. So is Six Carpenters cafe, 8 Co. 146. b. that nonefeasance, 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 trepfler ab initio; but if tollage was due, the defendants ought of course to pay it for that, and not dilate the goods damage.foam. And as to the principal cafe, he relied on the cafes in Crn. Eliz. 75 & 626. as in point; of which opinion were my brothers Page and Prolys, and myself, brother Lee being abcut for fickens; and judgment was given for the plaintiff, nif, &c. June the 16th this term. But it was never moved again. Lord Raymond 1589. If the King or any of his progenitors have granted to any to be discharged 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 or with any fair or market have been granted after the time of King Ethelred; but cannot discharge tolls formerly due to fuljices either by grant or preception. 2 Inf. 221. Also the King himself shall not pay toll for any of his goods; and if any be taken, it is punifiable within the statute Window. 1. cap. 31. 2 Inf. 228. And a defendant cannot demulc and free quit from all manner of tolls in fairs and markets, whether such tenant hold in fee, or life, years, or at will. 4 Inf. 269. 2 Inf. 221. 1 Rot. Abr. 321. But this privilege does not extend to him who is a merchant, and gets his living by buying and felling, but it extends to the撇t of goods; and to the king, lord, and all others; and things which do grow and are the produce of the land. F. N. B. 278. 2 Lem. 191. Crn. Eliz. 217, 2 Inf. 221. 1 Rot. 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 tranfater the proper property in the thing foid to the vendere, to that however injurious or illegal the title of the vendor may be, yet the property is good against all men. Latch 144. 2 Inf. 713. But this general rule, that a fale in a market changes the property, must be underfood with the following ref- trictions: 1. That this fale in a market overt shall not bind the King, alias it bindeth all others, as infants, feme, heirs, and executors, or in pillory, and whether they were fooll of them in their own right or as executors or administrators. 2 Inf. 713. 2. That though all fairs, markets, cafes, and other, the fale must be in lene open place, as in a shop, and not in a warehouse, or other private part of the house, fo that people who go alori may see what is doing; and therefore if the fhop door be window be fhot, the goods cannot be feen, this alters no property. 5 Co. 83. Bishop of Winchefer’s cafe. 1 And. 344. S. C. and S. P. Moz. 360. S. C. and S. P. Poph. 84. S. C. and S. P. Crn. Eliz. 454. S. P. 8 Co. 127. S. P. 3. The things bought must be of the nature and quality that which he deals in; and therefore if plate, &c. are bought in a scrivener’s fhop in London, this alters no property, and the true owner may maintain frover for them. 5 Co. 83. cafe of market overt, deter-mined at the Old Bailey, by Popham, Egerton, Ander fon, Brian, and others. Poph. 84. S. C. and S. P. Crn. Eliz. 348. S. C. and S. P. of the name of Bishop of Winchefer’s cafe. 1 And. 344. S. C. and S. P. Moz. 360. S. C. and S. P. and there faid that the law is the fame, if horfes are fold in Chefenfide, or fip-goods in Smithfield, Crn. Fac. 63, 69. Taylor and Chamber, S. P. adjudged. And by the 1 Jac. 1. cap. 21. it is enacted, That no fale, exchange, pawn, or mortgage of any jewel, plate, apparel, houfhold fluff, or other goods, of what nature, nature, or quality forever the fame fhall be of, and that fhall be wrongfully or unjuftly purloined, taken, robhed or stolen from any perfon or perfons, or bodies politic, and which at any time hereafter shall be fhot, uttered, delivered, exchanged, pawned, or done away within the city of London, or liberties thereof, or within the city of Winchefer in the county of Middletf, or within Southwark, in the county of Sarry, or within twelve miles of the faid city of London, to any broker or brokers, or pawn-takers, by any ways or means whatfo- ever, directly or indirectly, shall work, or make any change of or in the property of him from any perfon or perfons, or body politic, from whom the fame jewels, plate, apparel houfhold fluff or goods, were or fhall be wrongfully purloined, taken, robbed or stolen. 4. The goods must be fold, and a valuable confidera-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 abolute property; this will not bar the right owner. 2 Inf. 713. 2 And. 115. and 3 Cr. 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 Cr. 78. b. S. P. 7. If a fale be made of goods by a ftranger 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-uder, and he shall not take ad-dence of his own wrong. 2 Inf. 713. 8. There must be a fale and contrac, 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 fsuch tendernees of age, as it may appear to the buyer that he is within age, or by a feme covter, if the buyer know her not to be a feme covter, unless for good things as the offspring trades for, or by the consent of her hufband, bindeth not. 2 Inf. 713. 9. The contract must be originally, and wholly made in the market overt, and not to have the inception out of the market, and the confumption in the market. 2 Inf. 713. 714.
10. The faid must not be in the night, but between fun-rising and sun-fett; but a faid made in the night is good to bind the parties, but not a stranger. 2 I I. 714.

Here we all must observe, that at Common law there was no reftriction of goods on any profecution whatsoever, except on an appeal of jacentcy; but to remedy this inconvenience, and to encourage the profecuting of felonious breaches of faid, the faid law was altered by the 2 E I. c. 12, which describes what is meant by faid, and if any faid or felon do rob, or take away any money, goods or chattels from any of the King's subjets, from his perfet, or other wife within this realm, and thereof the faid faid or felon be indicted, and after arraigned of the faid felony, and found guilty thereof, or other wife attainted by reason of evidence given by the faid robber, or owner of the faid money, good and chattels, or by any other by their procurement, that then the party so robber, or owner, shall be refolved to his faid money, goods and chattels; and that as well the juftices of good delivery, as other juftices before whom any faid faion shall be made in the name, or counterfeit obtained by reason of evidence given by the party so robber, or owner, or by any other by their procurement, have power by the faid act to award from time to time writs of reftriction for the faid money, goods or Chattels, in like manner as tho' any faid faid or felon were attainted of the faid felony, or be made within six months by the party from whom the faid was faled, or by his executors or administrators, or by any other, by any of their appointment, at, or in the town or parish, where the faid fae, shall be faled, before the mayor, or other head officer of the faid town or parish, if the faid fae, or faid matter happen to be found in any town corporate or market-town, or else before any juftice of peace of that county near to the place where such fae, shall be found, if it be out of a town corporate or market-town, and fae as proof be made within forty days then ensuing, by two sufficient witnesses to be registered in the executors or administration of the faid head officer or juftice, (who by virtue of this act shall have authority to minifer a oath in that behalf) that the property of the faid fae, so faled, was in the party, by, or from whom such fae is made, and was faled from him within six months next before such fae, or any faid fae, but that the party, from whom the faid fae, was faled, his executors or administrators, shall and may at all times after, notwithstanding any faid fae or faies in any faid or market thereof made, have a property and power to have, take again, and enjoy the faid fae, upon payment, or redemptions or other to pay any expense, that shall have the poftitution and interfeft of the faid fae, or if, as he shall receive any money for the same, shall be fo much money as the faid party shall depose and swear before such head officer or juftice of peace, (who by virtue of this act shall have authority to minifer and give an oath in that behalf) that he paid for the faid fae without fraud or collusion.

See HOFFES, BAIL

Fall, (Futum.) A deed, which is a writing sealed and delivered to prove and testify the agreement of the parties, whole deed it is, and confis of three principal points, writing, sealing, and delivery. By sealing are threw the parties names to the deed, their dwelling places, date of the deed, upon what day it was sealed, and the elate limited, the time when granted, and whether simply, or upon condition, &c. 2. Sealing is a further testimonio of their constant, as appears by these words, in witness whereof, &c. In cuius rei titulum, &c. without which the deed is insufficient. In the time of the Seventh of Charles the Second, it was only in matters of importance, and avouchment, and that no toll-taker, or other person keeping any book of entry of any sae, gift, exchange, or putting away of any sae, &c. unless he knoweth the party that so saed the sae, gift, exchange, or put away sae, &c. unless he do indeed truly know the party and shall truly declare to the toll-taker, or other officer, as well the christian name, surname, mystery, and place of dwelling and reacy of himself, and that, 2. A deed of evidence is solemn and perfect, or reacy, or reacy of the party that shall aed to will certify what sae, gift, exchange, or put away sae, &c. his knowledge of the faid fae, gift, &c. and his true christian name, &c. and shall make a perfect entry into the faid book, of such
FAL

Falcata, One day's mowing or cutting grass. Fal- 
care prata, to cut or mow down grass in meadows hay'd, or in hay-making. It is also used of cropping from too much tumbled-down, which the Latin calls exteriarum, for in the foid it seems to be synonymous with oculadum. Termus de la ley. Cavall, ed. 1727.

Falcatura, A flock or fold of sheep, as mace were usually folded in one corn, pen, or fold. Cavall, ed. 1727.

Falsfey, or Falsfere, A composition paid by some customary tenants, that they might have liberty to fold their own sheep upon their own land. W. M. tenet ix. acuer terre eftimer une, in Bifjwy and (as sheweth) a letter written to the lord of the fold. 4. de sube, & c. 9. de falk, & fold, & folds, & folds of a famyne. Liber nifer Heres, fil. 158. See Falsbwy. — The liberty of folding or pemieing fleece by night, is still in North called fold. Cavall, ed. 1727.

Falskern, Yon is paid the money by the tenant to the lord of the fold, that he may be exempted from fold to fold, i.e. from folding his sheep in the lord's fold. Cavall, ed. 1727.

Falsbwy, The highest feat of a bishop, included with a lettuce. C. witt, ed. 1727.

Falsworth, Signifies a person of age, the same may be of some deccree from the Saxon fold, decri, and worth, De Fals. See Frankplage.
judged against him; because it was a by-law against Mag-
na Charta, Quod unde habeis imprimitatur, 3 Rep.
54, Clerk's case.

Judgment was entered, 14 Hen. 8. No man is to praefixe phy-
se in London, or within seven miles thereof, unless allowed
by the president and censors of the college of physicians,
and that there should be four censors every year, who should
punish by fine, amercements and imprisonments, for offences
by those who praefixe in non bona curtes, intend and
attend faculties medicine. Dr. Bonham being a graduate
in Oxford, praefixe physic in London, and being for-
moved to appear before the president and censors, he tol-
that, he would praefixe without their leave, for which
they fined and committed him to the counter, without
butt, and in an action of false imprisonment, adjudged, that
the defendant, being a graduate in Oxford, praefixe physic in
London, and being informed to appear before the president and
censors, he told them he would praefixe without their leave,
when they had only authority to fine and commit, pra non bone unde
credenda facultia medicina. 8 Rep. 114, Dr. Bonham's cafe.

In an action of false imprisonment, the defendant ju-
flified, setting forth, that the Lord Mayor of London was
a justice of peace, and that the defendant was a seargent
at arms, and that the Lord Mayor commanded him, pro
disse, to appear at seven o'clock on the twenty-fourth day
and imprison the plaintiff, &c. adjudged no good plea, because
it did not appear, whether the command was as he was
Lord Mayor, or a justice of peace, or for what cause he
was imprisoned. 1 Brev. 294, Wad's cafe. 2 Cr. 81.
S. C. reported by the name of Dower's case. In false
imprisonment, the defendant justified under a"prescription in the
Medicojus, to hold plea of all caufes within the verge, and under:
capias returnable at next court, and because he did not fliew between what parties,
(for that court hath only authority to hold plea between parties
of the boughl) and because the capias was not returnable at next
court, and because the defendant, being a seargent, was
adjuged, that the awarding the process was ill, and
that the action was well brought. 2 Cr. 314. Talbot v.
235. contra.

In trepols against the sheriff for arresting and impris-
omg the plaintiff, he justified, that by virtue of a la-
ait, at the suit of B. G. he took the plaintiff in exuit
ob affinius, and left him in prison to B. R. his suc-
cessor; the plaintiff replied, that B. G. who feed out the
bastard, committed the sheriff to discharge him of that
action before the imprisonment, and released him of that
action, and showed himself again to him and justified, that this
replication is good; for the sheriff is
bound to take knowledge of the party, as well in order to
discharge the person at whose suit he is detained, as he
is to arrest. 2 Cr. 279. Willers v. Henley.

In false imprisonment by the husband, the defendant
justified by a ca. fa, and the truth was, that before judg-
ment was made the plaintiff, &c. adjudged, that the
capias shall be against her, and not against her husband.
2 Cr. 323. Daily v. White. 2 Bouf. 80. S. C.

In false imprisonment, the defendant justified, for that
the plaintiff brought a little child to the parish church of
R. and would have left it in the water, without consentment,
to the danger of the child, and contra pacem, and that he
being confable arrested and imprisoned the plaintiff, until
he promised to carry the child back again, &c. and upon
demurrer, this was held an ill plea; because a confable
cannot imprison a man at his pleasure, he ought to have
\n\nIn false imprisonment against a justice of peace, the
party was discharged; for the 'tis an offence, yet the
major ought not to imprisonment a man in a dungeon, without
bread to eat, or a bed to lie on. 2 Bouf. 139. Hadge
and Howitts v. Mayor of Lichfarr.

In false imprisonment against a justice of peace, it
justified, that on the 27th of September 9 for a
minor committed to the church of St. E. m. to preach,
and that the plaintiff, &c. adjudged, that the
sheriff, being with the statue-
wards, laid violent hands on the minister, and hindered
his preaching, against the form of the statute, for which
offense he was brought before him, being a justice of
peace, and being thereof convicted by sufficient evi-
dence, he bound him to a fine; and this he held a good

False imprisonment against a mayor, who justified, for
that he being a magistrate, the plaintiff said he was a fool;
adjudged, that the plea was ill, for he cannot justify, &c.
unless he had called him fool whilst he was in his, or
in the execution of his office; for in such case, where
a man speaks from authority, or the exercise of his
authority, or which might disable him to execute his office (it true) he may commit the party. Mar. 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.

A ca. fa, was delivered to the sheriff, who on the
same day made a warrant to his bailiff to arrest the party,
and that the bailiff returned the warrant, and after error,
delivered also to the sheriff, of which the bailiff
had no notice, who afterwards arrested the party, and
he escap'd, and the bailiff having afterwards notice of
the jufification, return him; and thereupon an action of
trepols and false imprisonment was brought, and adjudged
S. C. Cr. Eliz. 918. S. C.

In false imprisonment, the defendant justified, for that
he was sheriff of London, and having taken one T. S. he escap'd, and being in pursuit after him in Flavi-
our crown, being uncertain, in the night, he met the plaintiff,
who said him, T. S. whom I had in my company, and who
was giving him scurrilous language, and therefore he being
wandering in the streets, in the night time, and mistaking
himself, the defendant committed him; and upon a de-
murrer to this plea it was objected, that it was ill, because
T. S. being uncertain as to the time; before
that was not a time to 'c. committed for a night-watch, it
being usual for men at this time of night to be about
their businesses, then the using him uncertain is too gene-
ral, and the thrilming him against the wall might be
by accident; fed per curiam. Taking it altogether the jufifi-
cation was good; and the defendant had judgment. 1

Judgment against bacon and feme, and the wife being
taken in execution upon a ca. 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, he brought
an action of false imprisonment; and because this was a
default in the clerk it was moved, that it might be al-
terted and amended; fed per curiam. There is a difference
where a man is brought into court by an abas 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 abas corpus, then there is a (special entry of
his commitment made on the roll; and in the principal
cafe the omission was amended. 2 Rel. Rep. 112. Alig-
ten's cafe.

Upon the return of an abas corpus, it appeared, that the
party was committed by a warrant from the Lord Chancellour,
and a Justice of the Common Pleas certifying the bacons
there to remain till delivered by him; adjudged, that the
return was too general, for it doth not mention the
causes; its likelywiser uncertain how long he might remain in
prison, for it may be during life, if the Lord Chan-
cellor will not deliver him. 2 Cr. 219. Addie's cafe.

Glander's cafe. 5 Car. S. P. flfod Abas Corpus.

(13) 8.
The defendant was committed by the suffrions until he should obey an order for taking upon himself the office of confable of such a place; he denied, that he was an inhabitant within the hundred; adjudged, that he ought not to be imprisoned, but he was directed 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. Crouch’s case. Cr. Cas. 450.

In false imprisonment, the defendant justified by virtue of a warrant to the court to arrest the plaintiff, and that he was 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. Cr. Cas. 324.

Garling’s case.

In an action of assault, &c, and false imprisonment, the defendant justified, for that the plaintiff being a common cheat, played with the defendant with false dice, and cheated him of his money; thereupon he multated laid his hands upon him, in order, that before a justice of peace, who, upon his examination, bound him over to the next sefions, &c. It was objected, that this plea was not good, because a man cannot be detained for an offence without a proper officer; but adjudged, that the plea was good, for a common cheat may be brought before any justice. 12 John. 348.

In false imprisonment, the defendant justified under a prescription to have a court of record in London, and that he was a fejrent of the mace of the court’s, and had a warrant directed to him to arrest the plaintiff pro quodam contempsum, for not paying 20l. to B. G. which he did; and upon demurrer the plea was held ill; for to imprison a man pro quodam contempsum 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. Dyce v. Ollier.

Alderman Langham was committed to Newgate by the Lord Mayor and court of Aldermen, who brought his habatus corpus; and upon the return it appeared, that there is a custum in London, if a Freeman be elected Alderman, he ought to take an oath to serve in that office, and that if he refuse, he shall be committed till he doth; that Langham was a Freeman of the city, and that he was dekto modo himself, in commission of the court, and being summoned to the court, he appeared, and the oath was tendered to him, which he refused to take in contemptum curies, & contra confutuendum, &c. whereupon he was committed by the court, &c. 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 fortiis, 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 Brounker was found within the county with the defendant required him to find securities for his good behaviour, which he refusing was committed, and afterwards he brought an habatus 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 committed in such case he refused to find securities. 6 John. 6. Sir William Brounker’s case.

Commission of rebellion against Thurkone, but one Green appeared before the commissioners, and affirmed himself to be Thurkone; whereupon he was apprehended, and in refuting he matched the commission from them, and tore it in pieces; and upon an affidavit made of this matter the justices ordered him to take the oath; but for Hale Chief Barb, Though he affirmed himself to be the person against whom the commission was awarded, yet that will not excuse the commissioners from false imprison-
FAL

same court. And that record have before our justices at Welfminton, the day, &c. under our seal, and the seals of four legal men of the said court, that were present at the same, and that there was there found good fummurers, the said C., that he be then there to hear the record, and have there you the summurers, &c. and this writ. Wit-
ters, &c.

See 12 Fin. 8. h. 6. Falmouth Judgment.

Falfe Latin. False Latin will not vitiate a plea of guilty if it was held in Chancery to 10 Rep. 151.

It will not vitiate an indictment, as it was held in L652, which was an indictment for murder, where the man motto was sealed with a single m. 5 Rep. It will not vitiate a writ, as where quod ei deficit was brought against two tenants, and it was quod ei reddat in the singular number. 1 Dar. 30. Er. c. 545 - S. P. So in the case by the sheriffs of London against the defendant quod reddat ei in the singular number.

Hib. 70. C. Eliz. 877. S. P.

Debt against the defendant brought by the sheriffs of London, the declaration was, (for) Recusant of N. B. in mediocres actions, also dixit N. B. in mediocris dictaminis: and upon demurrer to 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. 384. Raymond v. 5 affisis Burdon.

In treble against two defendants, for taking a hog- head of cyder, the defendants non et delibemus, &c. (for) quod ei deficit campis, deus, & c. and pleaded in abatement, that the plaintiff is outlawed; and upon demurrer it was objected against the plea, for the false Latin, (viz.) Quod quid eis, when there were two defendants, and this was held a good exception, the plaintiff having demurred generally, and showed it for cause; and that it would have been ill used upon a general demurrer. 2 Ltitw. 1529. Ford v. Edgcomb & a/.

In an appeal for murder, the declaration was, that at Chelham, in the county of Surrey, consort prdact (some) Johannis et quondam Daniel Slatero modi defunti, &c. and upon demurrer it was objected that the defendant had made the sentence false Latin, yet it would not abate the bill, for it did not at Common law. 1 Salt. 328. Ben-


On a writ of error brought, it was assigned for error, that the declaration was false Latin in deed, and did not affirm in fact, but it was held well enough, for it must be considered under the tenor of the verb affides, and there is not so much strictness required in verisims as in pleading, because these are the words of a lay jury. 1 Salt. 328. Redound versus Gower.

In debt on a bond, if the obligation be false Latin, the declaration ought to be good Latin; as if the obligation be videtur, the declaration ought to be videtur; and the court is to consider if it be a variance. 2 Shaw. 155. False Latin was held to be cured by a verdict. 8 Mich. 380. See English, Latin.

False oath. 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 council used to assemble and punish such perjuries at their discretion; and there was no punishment for perjury at Common law, but in case of attainit; as appears D. 272. but in the spiritual courts, pro levis falsi, they use to punish them. Gr. c. 540. Mich. 38 and 39 Eliz. C. B. Danport v. Spen-
ing.

If the makes a false oath, the party is punishable for it by an action on the case, if he be not perjury for which he may be indicted; there is a difference between a false oath and perjury; for one is judicial, the other is extra-
judicial. And the law inflicts greater punishment for a false oath made in a court of justice than otherwise, be-
cause of the preservation of justice. Per Rull Ch. J. Fin. 1652. 32. 537. in case of Howell v. Green.

At the Common law one may be indicted for a false oath in an affidavit. Per Rull Ch. J. Tim. 1652. 36.


False plea. In practicum good reddat against two, if the one one was taken and the other two innocent upon him, upon which they confessed to affire, and the court allowed the tenant, by this he shall lose his moieties; for it is found against the tenant for his part, because it is tried for both upon affire; contra ei pleas to the writ by demurrer.

Note the difference, Br. Peremptory, pl. 73. cites 8 Ed. 376.

Pla ris in a suit in Chancery against an executor, shall have the fame advantage thereof, as if the same pleas were found false by verdict at Law, and shall have all the same consequences here, as follow on a false plea at law to all intents. 1 Mich. 26 Cas. 2. 2 Chanc. Cases 201. Parker v. Lee. See pleading.

False proprietories. See Proprietories.

False suggestion. See Suggestion.

False tokens. See Chants.

Falsefes. Seems to signify as much as to prove a thing to be false. Perkins, Divor., 385. So also to lay or do falsely, as to falsify, or counterfeit the King's seal. 4 E. W. 79. See Moxon, Chief. 12.

Falsefying a record. It is hidden, that he who purchas of a person who afterwards is outlawed of felony, or condemned upon his own confession, may falsify the record not only as to the time wherein the felony is supposed to have been committed, but also as to the point of the offence. But it is agreed, that where a man is found guilty, by verdict, a purchaser cannot falsify as to the point of the offence, but that he may falsify for the time, where the party is found guilty generally of the offence in the appeal or indictment; because the time is not material upon evidence. 2 Hawk. P. C. 43.

Also it seems agreed, that any judgment whatsoever given by persons who had no good commissary to proceed against the felon condemned, may be falsified by shewing the special matter without writ of error, because it is void; as where a commissary authority to one commissary to order an indictment taken before A. B. C. and twelve others, and by colour of the commission proceed on an indictment taken before eight persons only. 2 Hawk. P. C. 459.

Also it seems agreed, that if the treason or felony of which a man is attainted, be afterwards pardoned by parliament, the attainted may be falsified by himself or his heir without any further proceeding. 2 Hawk. P. C. 470.

Falsifying a recovery. Tenant in tail, in tail, he in remainder granted a rent-chargre out of the land, then the tenant in tail suffered a common recovery, and lost the estate, and died without issue; the grantee of the rent-charge disowned, and the alienor of the tenant in tail reprieved; adjudged that this recovery barred all the remainder, and all charges made by them, and likewise all those in the reversion, and that the grantee of the rent shall never falsify this recovery; because the remainder out of which his estate is derived can never come in possession after the recovery suffered. 1 Rep. 61. Ca-

pella's cafe.

Husband and wife jointenants of lands, remainder to the heirs of the body of the husband, remainder to H. Norris in tail; the husband suffered a common recovery alone of the whole, without raiming his wife, as he ought; H. Norris was attainted of treason, and executed; the husband died without issue; the Queen granted the son of H. Norris, and granted him the lands which he had by the attainted; adjudged, that though the recovery was erroneous, yet to long as it was in force, it was a good bar against him in remainder as to a moiety, but as to the other moiety, it may be falsified by the plea in tail. The second section of The margin of Wincle fishes cafe. 3 Rep. 3. D

Tenant
Tenant for life, remainder in tail, reversion in fee to the heirs of the devisee; Tenant for life suffers a common recovery, in which he in remainder was vouch'd, and the use was declared to him, who was no remainder in tail; and therefore recovery all remainders or reversions were barred, for no statute made any provision for those who had remainders or reversions upon an easement, and therefore they could not satisfy this recovery; the statute of Wms. 2. cap. 3. provides for him, who had a reversion after part of the estate, and the statute 25. Eliz. c. 31. for those who have re- remainders or remainders attorn an estate for life.

An infant brought an affifie in B. R. pending which affifie the tenant brought an affifie against the infant in the C. P. for the same land, and he obtained bar to the affifie brought by the infant, who set forth all this matter in his replication, and that she did not appear at the time of the second writ brought, was tenant of the land, and prayed, that he might satisfy the recovery; and adjudged he might. G 118. 2 V. c. 3.

Tenant for life, remainder in tail, join in a lease for years to Briggs; afterwards, in the life-time of the tenant for life, the tenant in tail suffered a common recovery, and then the recoveries turned the lice for years out of possession, and made a feoffment in fee to Lincoln college in Queens, then the found heir of the tenant in tail, in the life-time of his father, released to the college with warranty; the lice for years re-entered, then both the tenant for life and tenant in tail died, and the lice in tail made a defeasance on the cattle of the lice damage-plaintiff, who brought a replie, and adjudged, that the cattle the lice was not, as it was, reversion 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 expelled to say, that he had nothing in the freehold, and the heir is liable to this espell, as well as he is inheritable to the land; and the real value of the lice is in the body of the tenant for years. But if the tenant in tail, who suffered this recovery, is supposed to have a real recompence in value from the common vouchers, but here he had no real recompense, but only in espell, and that himself was espell'd, yet, by the recovery of the lice for years, the estate for life, and the remainder, were again restored to the lice. Tenant for years, because neither the remainder in tail, nor his son and heir, had any thing in interest, when the realtie was given to the college, therefore that release should not excuse to that body of men, nor the warranty; for it's the nature of a warranty to keep one out of possession who never had it, and therefore ought to be made to one who is in possession; and because the tenant in tail in this case was not out of possession, in inte cilt, but only in espell, neither the release or warrant-y shall discontinue the tail; so that the lice in tail is not barred by this recovery, but he may satisfy it in a pfiffory aliquam, as this is.

FAR

Tenant in tail made a feoffment in fee to his own son, who was then of full age, and afterwards he dined him, and then levied a fine, but before the fine proclamation the fine entered, and made a feoffment, then all the pro- clamation was made, and afterwards both the father and son entered; then the fine for the fee of the lice made a lice to R., and died forfeated, and the lice of the tenant in tail brought a foremead against the heir of the said feoffees, who was n't by descent, and recovered against him by a feint defence of his title, and then he turned the lice in years out of possession, and thereupon brought an ejectment; adjudged, that he might satisfy the recovery, had by the lice in tail, because the lice in tail was bound

by this fine; but because it appeared by the pleading, that the fine was levied by the father to that very purpose, to whom the fee free of the fine had granted this lease for years, and who was not avowed to be levied to any other use; therefore the lice was extended, and he was incapable to satisfy the recovery obtained by the tenant in tail.

See Fines and recoveries, and 2 Tit. Ab. 16. Tal- fifgmony.

Failing a verdict. Where in any real action, there is a verdict against tenant in tail, the lice can never satisfy such verdict in the point directly tried; but only in a special manner, as by favoring that some evidence was omitted, etc. Lord Raym. 1250.

Falsification of a verdict. A torque or spurious falsification declarations, 12 remainders demandant, ad lice, decedent. Howd, t 474. num. 40.

Fals recoupa byltium, is a writ lying against the sheriff, for false returning of writs. Reg. Indulc. fil. 46.

Familia, Signifies all the servants belonging to a particular master; in another sense it is taken for a portion of land, viz. as much as is sufficient to maintain one family, viz. Et confituent et terram 70 familiarum lappon, Simon Dandin. So in Pint. Detti e mossofierium tigurat famillam in ten. De Canae, Proa nonn., mania, nurvavna — Domestam terram quinquaginta famillam at ad 70 farinam 50 denarii, Pet. Bus. 98. c. 3. This term hide, is by our writers, sometimes called a mania, sometimes a family, sometimes carucata, or a plough-land; containing as much as one plough and oxen could cultivate in a year. Grevitts Church Hist. fil. 723. B. Biba familia, Familia est interpres existantium tullam hidem, col. 202, Nuimans famillam curiosa. Chilh. in x. Script. Corvall. edit. 1727.

Fanatikus, A general name for Quietus, Anekattt, and all other sectaries and foolish dissenters from the church of England. Stat. 13 Car. 2. cap. 6.

Fanecon, (Mafia fanecon). The Luminist time or fence-maker, a man who would keep his days before Easter, and fifteen days after; when great care was taken that no disturbance should be given to the doors or their young fawns. See Kenneth's Obligatory in Fenstasqu. During this time, by the Laws of the Forrester, all hunting is prohibited: Praedatum in eum ad platum forserhe ne eligant corretta terras et terrae ex qua egressus erat. By a writ in rebus in signam ostendit, qui in foresee Reges tempore forse, val. 13 dictum ante antichristum secti Johanni Bapi, et 14 dictum tali idem feteron, Howdson, t 782. See Fenstasqu. Fanaconium frumentum, Wheat or bread cleaned up or grown with a wind-fan or knee-fan.—Ciceterius Alm. Wiggins so recipit in septembris dicto forstrarium frumentum, & denus mititibus. Mon. Anglii, t. p. 130 b.

Fantecon, (from the Fr. famon,) A fawning or bringing forth young, as deer do fawns. Charte Forstis, cap. 8.

Fandaman, (from the Sax. fordan, to travel,) According to the interpretation of Saxon de aerius, jugis is a merchant stranger, to whom, by the laws of Saltland, justice ought to be done with all expedition, that his business or journey be not hindered.

Fardon of land, (Fardilla terra,) Is, according to some authors, the fourth part of a hundred lands; yet Not, in his Compend. Lawye, p. 57, will have two fardins of land make a rook, and four rooks make a yard-land.

Fardinnalig, (Sax. fardred, i.e. quarter, and all or dole, pas) Alias fardrilled of land, quadranita terra, signifies the fourth part of an acre, Gram. far. fil. 310. Quadranita terra is read in Reg. Or. fil. 310, where there is a Indivisa lay and allot 800 libras & liberae titra, which probably must arise in proportion of quantity, as an half-penny, penny, half-libra, pound, rite in value or estimation; then must allothe be half an acre, deminuitor an acre, sediduta twelve acres, and libera twelve foot acres; and yet we find Pigst. libra stria teria sed reddenda, Reg. Orig. fil. 344, and fil. 345, whereby it femetis, that liberae terra is: so much as yieldeth twenty thinnings.
F A R

FAT

fer annus, and Centum solidates terrarum, centummarum &
C. 140. Ann. 1400. A great

these words, Vignoles tessels varum sed redditus, which
argument it to be so much land as yields twenty shillings
per annum. See Furlong. Others hold solidata terrae to be
but half a perch, and demanrita a perch. See Sylvis. Goof.
verbo Obolata terrae. Sylvis, &c. me R. de J. dekelle
mictrue, de varento solidatone terrae, de ne dominio. &c. Nova.
Ang. 2 par. fol. 97. b. At Miland in Hertsfordshire,
they call it a wendal of land. Cowell, edit. 1727.

Farthing, or Farthing of gold. Seemeth to be a coin used in ancient times, containing in value the fourth part of a noble, size. twenty penny in silver, and in weight the fourth part of a pound of gold. See shillings in this silver. This word is used 9 H. 5. cap. 7, thus. Item, That the King do be ordained good and just weight of the noble, half noble, and farthing of gold, with the rates necessary to the same for every city, &c., by which place it plainly appeareth to have been a coin, as well as the noble and half noble. Kinges, in the year
1345, faith Eudem annus noble & stoler & forthing de auro corporum flororum in Anglia. Cowell, edit. 1727.

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

Fartingoom. Toll of meal or flour.—Et quot de
certiorum de anno capite fartingoom, &c. Ordina-
tiones juitis, in Infalsa de Jersey. 17 Ed. 2.

Fartley, or Farley. In the manor of Weft Sapon in
com. Devon. if any tenant die possessed of a cottage, he is
by the custom to pay to the lord firense for a farley; which
may be in lieu of a heriot. For in some manors,
westward, they distinguifh farley to be the belt of the
goods, as heriot is the best beast, payable at the tenant's
death. Cowell, edit. 1727.

Fartlingarri, Wheremongers, adulterers; from the
Sixth. furtige, fornari. Cowell, edit. 1727.

Fart. Farm, or Fartm, (form the Sax. for, i.e. fed,
and this from farman, i.e. to feel) In the laws of Car-
mon, in 67, Farm, M. Lombard renders scilicet, to
redde firma nem unum nofit, and reddebat suum deo
ferm, is so much provis on for a night and a day; for
about the time of William the Conqueror, the rents were
retained in provision, which was altered by H. 1. It
is usually the chief messenger in a village or town, whereo
belongs great deemes of all forse, and hath been used
for term of life, years, at will. The rent referred upon
such a lease, is called farm, and the tenant or fellee
farmer. See Frett, and Spelman's Goff. verbo Farta, Cowell, edit.

Fart. I le who rents a farm, or is leffe thereof.
Termes de la ley. And it is said generally for every life
for yeares, 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 hus-
bandry, heefdmman is the proper addition of a farmer.
2 Hunc. 188. By art. 21 Hen. 8. c. 13. No part or
spirtual part in may take farms or leases of land, on
price of forbeing term. &c. per month. And by art. 25 Hen.
8. c. 13. and 32 Hen. 8. c. 28. No person whatsoever shall
take above two farms together, and they be to be in the same
parish, unless by the special leasse of the land.

Farmers. Castigats, &c. Not to be deemed back-
rupes, 5 Gen. c. 30. fett. 42. For farmers in Nor-
falk and Suffolk, see Hoefox and Haffoff.

Farmers of crete. Their authority, 16 & 17 Car. 2. c.
4. 46.

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

Farting of land. (Sixth. farting.) Seems to be a
great quantity, and differs much from farting-deal; for in
a book of Survey of the manor of Weft Sapon in com. Devon,
there are these words, Vignoles, for fartings of land at 1360. per annum. See Farted, and Fartings deal.

Farting always imported the fourth part; and therefore quarter-raths, or pieces of gold that paid for
thre twillings and experience, the fourth part of a rial cur-
rent at ten shillings, were called rial-farthings in an
accen

dit"the of sect. 1 H. 6. Cowell, edit. 1727.

Fartemude. The same with Farting-deal.

Fattina, A language, viz. A Latin rhetoric in
fiagrum veritatem abhii. Do Prevere.

Fatt, A fogget, Fr. fetteau. — Confinis alba
 ligneus remanue glauca latif us tipi. Man.

Fattemans, Pledge, from the Sax. feft, firmus, and
man, Home. De capitulis fine felipufibus, sed Angles

Fat, or Claf, is a great wooden vellet, which among
brewers and millers is ordinarily used at this day to mea-
ure malt for expedition, containing eight bushels, or a
quarter, mentioned 1 H. 3. cap. 10. 11 H. 6. cap. 8.
It is also a leaden pan or vellet for the making of fold.
Dreadon in the counties of Hereford, whereof the sever-
ral owners or proprietors do claim effects of inheritance
and burgee-ship; also a great brewing-vellet used by all
brewers to run their west into. Cowell, edit. 1727.

Father and Son. Father shall not have an action
against the maller for beating his meller and heir apparent,
and laming him so as to be disfigured as to his marriage.

Action liet not for the father, tho' it was objected
that he was at the charge of eating his son's body, but
cause he was not communicable to it. Cor. Ed. 894. But
it was admitted that action might have lain for the father,
if he had shewn, that the son was his servant, whereby
he left his service. But alleging lack of service, without
alleging that the son was his servant, is not sufficient.
Cor. Ed. 894.

If the son marrieth without consent of the father, the
father has no remedy. Le. 50. Grey v. Jeffy. — See 5

The father shall not have action for taking any of his
children except it be his heir; and that is, because the mar-
rriage of his heir belongs to the father, but not to any
other his sons or daughters. And the father has no prop-
erty or interest in the other children, which the law
counts may be taken from him. Cor. E. 770. Trin.
42 Eliz. B. R. Barkam v. Dennis. — But Glanyll J.
Jenks, ibid.

Tenebris quartae flume & heredibus famulis & al-
deer lies for the father, but not for the mother; for
the father of common right shall have the widd of his son
or daughter; for Cautby. Br. Gards, pl. 55. cites 9 Eds.
5. 327.

Bonds related by the father, which he had taken in
the name of his sons, being infants, of eight years and
allowed. Tabb. 88. cites Hill. 20. fo. Simms v. Lanley.

The grandfather devised lands to his son to pay 101.
per annum to the son's three daughters; the father gives
201. in marriage with one; whether the 101. per ann.
shall be included in the 201. or not? was decided that it
should be included. Tabb. 141. cites Mich. 13 Car.
Derington v. Afly.

The father received a legacy of 1001. and another of
50. left to B. his eldest son by the grandfather and
grandmother; afterwards the father gave bond to pay his
son whom he had disinherited, 6001. was judged, that the
bond included the legacy. But Lord Jefferys, in favour of a
disinherited heir, would show no more than what they
could prove to have been solely paid towards satisfaction of these legacies, and co nomine as in part
of the legacies, and the reft to be paid with interest.

A legacy of 1501. to the daughter of B. was paid to
B. who after on her marriage with J. S. gave her 1001.
portion, and settled a church lease upon her, and main-
tained her and husband 14 years at his own house.
The Master of the Rolls decreed the legacy with coit, but said tho'
he would not thus a great waste so day to day more
than they could prove to have been solely paid towards satisfaction of these legacies, and co nomine as in part
of the legacies, and the reft to be paid with interest.

The father is obliged by the Common law to provide
for his children. Lord Rayn. 41.
Justice cannot order a maintenance for a child to be paid by the father, without adjusting that the child is gone, or likely to become chargeable. Lord Raym. 699.

Child not demanding their legacies of their father when they came of age, or after, is no discharge of them; and the father is bound to maintain them, and their portions given by a stranger are more burdensome than 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 so interest was allowed. But where one of the daughters married, and the other died being the last year's board after marriage, the father would be allowed for it, unless an agreement be proved to the contrary. Poccb. 7 Ann. 3 Ch. 1. 168.

Strickland v. Haydon and Molon.

Advis. 250 l. to his son, and make his wife executors, who married another husband. On a bill brought against them by the son for the legacy, the defendants would have discounted 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. 64.

But a sum of money paid for the binding him out apprenticeship was allowed to be discounted. 2 Vent. 325.

And the mother was deemed a reasonable allowance for maintenance of her son from two years of age, when the father died, to 18, when the son died; the bond received the rents of 33 l. per annum depended upon the father on the son, as rent at law. Poccb. 7 Ann. 3 Ch. 164. Wollis v. Everard.

A father prepared a bond conditioned for payment of 120 l. a year for his life by his son, whom a very large estate had been devised, and upon proposing it to the son, he refused to execute it. Laying it was more reasonable to bind 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 signed 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 for fo, as to amount to a threatening, and to intemperable; but it must also be otherwise, and the father feared to procure under the son's anter, and for ought appeared it was his free act, and what he thought himself. If obliged in honour to do, and therefore without any proof to impeach it, it should not be set aside in equity. Huns. Rep. 662, 667. Hill. 1719. Blackburn v. Eyres.

If it should ever appear that the power of a parent over a child has been abused, as by his gaining a releas from the child's or homage price by threats, &c., a court of equity will certainly set aside a releas that unadiately gained. Per L.C. Parker, Poccb. 704. Wak's Rep. 639, 692, in case of Plowden v. Borker.

Fattorium. (Id. H. cap. 70.) Perhaps the same with the Sw. seath doth, i.e. fattorium seu iniustitutum muliebre concubinage.

Fata cardi, A whore. Cum quadam fatae matrice unde ad tota cum nullis exitis dependerent. Du Fauru.

Fauceum, A flute, a medical pipe or flute. Organo tunc & decentem, fauciis & pipet euminos in diuini officii omnibus usufris tertiusque focus interdicens. Regul. Ordinis de Sempinghnam. p. 717.

Fauetor, A favours, a supporter, abettors of others. Inst. 2. St. 5: Fauetor. See Fauetorum.

Feal. The tenants by knights-service did swear to their lord to be soal and loyal, i.e. faithful and loyal. See Spenham of Parliament, pag. 59.

Felsip, Fidelitas, from the French fief, legs, trusty. Swearing defense on an oath, taking at the admittance of every tenant, to be true to the lord, of whom he holdeth his land; And he that holdeth land by this only oath, holdeth in the freest manner that any man in England under the King may hold: Decease all with us that have fear, hold per fidem & fidelitatem, that is, by fealty at the leaf. Smith of Repub. Angli. lib. 3. cap. 8. For fidelitas in de fidefiantia feudal, du Sueremus, feal. feal. cap. 2. num. 4. And Nauenw de Affictis dicit, 360. n. 469, that fidelitas, the true faithfulness, non feribilis. The particulars of his oath, as it is among the Feudelis, you may read well express by Zulius, in his treatise De Feudis, pet. 7. num. 15. 16, which is worth the comparing with the usual oath taken here in England. This fealty is also used in other nations, as by the Landgraf and Burgundian. Cossenons de Conforf, Burgund. pag. 419, 420. And indeed the very creation of this tenure, as it grew from the love of the lord toward his followers, so did it bind the tenant to fidelity, as appeared by the whole course of the Feuds, and the breach thereof is the los of the fee. Dauerns in Comemures. Parker, cap. 15. num. 4. f. Jepson. Antw. Castelis and Burgundian. Cossenons de Conv. conft. the Comem. de sale Ann. amitterit. Husman in his Commentaries De securit Feudos, fheweth a double fealty; one, generally to be performed by every subject to his prince; the other special, required only of such as in respect of their fee are tied by this oath to their landlords. We may read of both in the Grand et ufually of Norman feudal, being of course performed to the Duke by all retainers within the duty. This fealty special is among us performed either by free- men or villains. The form of both fee in Annu 14. Ed. 1. flat. 2. in these words, When a Freeman shall do fealty to his lord, he shall hold his right-hand upon a book, and say, I promise and engage myself that I will serve you to you faithfully and true, and shall feal my fealty to you, for the land that I hold of you, and truly shall do you the officium and services that I ought to do to you at the terms join'd: So help me God, and all his saints. And shall kiss the book, but he shall not kneel. When a villain shall do fealty to his lord, he shall hold his right-hand over the book, and say thus, Hear you my Lord R. that I R. from this day forth unto you shall be true and faithful, and shall do you fealty for the land which I hold of you in villanage, and shall be justified by you both in body and goods; so help me God, and all his saints. See Reg. Orig. fol. 392. a. Fedelitas (fath. Spantum) of fubit, obsequii & servitii legem, qua generaliter fidelitas REGY, particulariter bufidum dominii, affergitur.

It is usually mentioned with homage, but it differs from it; for homage consits in the taking an oath when the tenant comes to his land, and is done but once, and so is the oath of fealty, but that is perpetual which homage is for ever. Those two things in the name of the fealty, or manner of the fealty, for the oath of homage is taken by the tenant kneeling, but that of fealty is taken standing, and includes five things, which are comprised in these words, becalme, tutam, utile, hominum, facile, paffibile; inasmuch, that he do bodily injury to the lord; tutam, that he do him no secret injury in any thing which is for his defence, as in his house or castle; hominum, that he do him no injury in his reputation; utile, that he do not damage him in his possessions; facile & paffibile, that he make it easy, and not difficult for the lord to do any good, which otherwise he might do, nor make that impossibility be done which before was in his power to do. All which is likewise comprised in Leg. H. cap. 5. Omnis hanc fidem det dominio, fac de vita et membrii iust et terrae honesta, & observationem justi fieri per hominem et utile, quale deti fausto et terra principis fausto. Cowell, edit. 1727.

Feasts, The customary times of supper and thanksgiving, as Christmas, Easter, Whitsante, &c. The four feasts which our law especially takes notice of are the feasts of the Annunciation of the Blessed Virgin Mary, of the Nativity of St. John the Baptist, of St. Michael the Archangel, and of St. Thomas the Apostle, on which quarterly days, rent on leases is usually referred to be paid. See Statute 5 & 6 Ed. 6. 3 Ian. 1. & 22. 22 Car. 2. 30. See Dedication-day.

Febr, Itum februm, oft qued quodar viginti terre & dimid. debeat venire & arae nume fevus terre, in quibus
and as General, but and Fleta dis,
ochus, and in the land, quis
minico is as the hini,
write his duty, and his
right to pay the duty, and his
sight to this or that policy of himself, or his friends,
but it is to me and my heirs for ever; yet not simply mine, because
I hold it in the nature of a benefit from another.
Yet the stature of 37 H. 8. 16th these words of land involved in the crown, but it proceedeth from the notion that the nature of this word is for fee cannot be without fealty sworn to a superior, and therefore it mostly in nature, as fealty, and in particular Heres in his Commentaries and Disputations. And nor, and land, of with us is termed fee in two respects, one as it be-leaguered to the right, and others who hold not with another. Britton, cap. 23, defines it thus: Fee is a right confining in the person of the true heir, or of some other that by just title hath purchased it. Pluta
feal, Fœnum oft quad quis tenet ex quacumque causa fit & hereditum fut, fee fit tenementum free relictus qui non presentum ex camera, & alio modo clitterat fœnum, ega qui feudan, ega quis tenet & de all & all fædum tenet de tall tit fees por servitium militare. Lib. 5. cap. 5. feal. Fœnum aetern. And all that write De
fœnum, hold, that feudatorius hath not an inestimable property in his fee. But the definition of Sir Henry Spelman is most inestimable. A fee is a right which is neither right in land, or some immovable thing of his lord's, to the fame, and take the profits thereof hereditarily, rendering to his lord such feudat duties and services as belong to military tenure, the mere property of the soil always re-
maining to the lord. Spelman of Fœna, cap. 1. The division of the fee and the several parts thereof is not to be known; but we divide them only into fee abfequent, otherwise termed fee simple; and fee conditional, otherwise
called fee tail. Fee simple, fee demesne, is that which we are feised to us and our heirs, with limitation, that is, the heirs of our body, &c. and this fee
tail is either general or special: General is, where land is
given to a man and the heirs of his body; the reason thereof is given by Littleton, lib. 1. cap. 2, because a man seised 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 lands of the second wife, and not the issue of the first, unless by another act of Parliament, or by the will of the first. The reason is given likewise by Little
eton in the same place, because in this cafe the wife dying without issue, and he marry another by whom he hath issue; this issue cannot inherit the land, being ap
propriely given to the wife for her life. This fee tail hath the original from the statute of Wills, and as to make
Ed. 1. yet fee Brathen, lib. 2. cap. 5. num. 3. in his Liber. item quadum subfebis & quadum tractor & ex re
secta est certis hereditatibus. To whom add Plut., ed. 235. Wilton's cafe; for before that statute, all land
given to a man, his hirfie, or that of his, was not accounted in the nature of a fee; and therefore behold
be to firmly in him to whom it was given, that any li
mitation notwithstanding, he might alien, and fell it at his pleasure, much like that which the Civilians call
fœnum perpetuum, binding rather by counsel and advice, than by act, and which being unreasonably
renounced to the wisdom of our realm, that a man may
be licentious to this or that policy of himself, or his friends,
might be forthwith deprived of his intention; the said
fœnum was made for redress of that inconvenience,
whereby it is ordained, that if a man give lands in fee,
and limit the heir to his issue, and the issue of his he
irs, with all other fees and services, the said fœnum, or
the form and due meaning of his gift shall be observes:
He then that hath fee, holdeth of another by some duty or service, and the diversity thereof, fee Chevalry and Service. Sec
conly, this fee is used with us for the procisions of
the lordship, or for the compacts or circuit of a manor or lordship, Brathen, lib. 2. cap. 5. in cadem villa & de cadem feudis. Thirdly, It is used for a perpetual right incorporeal, as to have the keeping of prions in fee, Old Nat. Brew. ed. 41. Fis
fer in fee, ed. cap. 6. rent granted in fee, ed. cap. 8. Sherif in fee, ed. 29 Ed. 1. fet. 3 cap. 8. Lastly, It is taken for a reward or wages given to one for the execution
of his office, as the fee of a fofter, of a keeper of a park, or of a sheriff for serving an execution, limi
ted by 20 Eliz. cap. 4. And also for that consideration
given a fofter in law or counselor, or a physician, for their counsel in these cases, or their wisdom and discretion, as it is well observed by Sir John Davis, in his Preface to his Reports, is not properly nearer, but honorarium; yet in
the law language it is called a fee. Cowell, edit. 1727.

Fœnum arc. See Gallae.

Fœnum perpetuam, is by the Pandeks termed fœnum ex
debellatum, or operationem subfuturum usul. Muthus de Affilia mil. difci. 262. no. 2. pag. 457. See Cornutus.

Fœnum (Fandi firma) Is when any one, of the gift or grant of another, holds to him and his heirs, ren
dering either the half or the third part, or at least the fourth part of the true value. And such tenant is bound to no services, but he is to contribute in the charter itself, except fealty, which all tenures are liable to. Gliff. verbo Fœnum, page 221.

Fœnum, Fœnum is a compound of the words fee and fœnum, prædium, and signifies in a legal sense land held of another in fee, that is, in perpetuity to himself and his heir, for so much years that it is absolutely worth, more or less, so it be the fourth part of the land, with their out homage, fealty, or other services, other than are spe
cially comprized in the fœnum? But by Fitzherbert, in his Nat. Brew. ed. 210. it fecmeth, that the third part of the value may be appoinued for the rent, or the finding of a charger for the service. And the nature of it is thus, that if the rent be belated, and paid for the space of two years, then the fœnum, or his heirs, have an action to recover the lands as his de
fes. Britton, cap. 66. num. 4. butobserve, that Wills, in his Symbol, part. 1. lib. 2. fei. 406. says, that the fœnum is a form of fee tail, or form of can
weeth Vol. II. N°. 72.
oweth fe邸 thought not express’d in the feodium, for
that fealty befothed to all kind of tenures; this is near
the nature of that which, among the Civilians, is called
Ager revertéls, qui in proprium lacrim tantum, ut
quidam pro se vitulæ patruet, namque neque efti pri
cius, necque in humo earn surveilla, curti
orari am luxet. The fee-ferm 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 alienations of any nature, is evident from
this, that whilst these rents were expatiate for ready
money, scarce any would deal for them, and they
remained unful’d, till the method of doubling orders did
a little help; but that which made men earnestly to buy
them, was the fip upon fame of his Majesty’s other payments,
which made men to retort to this, the most
chaste of that conducture. Gwris, edit. 1737.

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

Sect. 10. Purchasers may buy and enjoy the fame rents,
notwithstanding any future of mentres.

This act of parliament was not necessary to enable the
King to make a grant of thofe rents, but to encourage
purchasers, and to give fuch privilege to the febjud, which
the King could transfer without act of parliament, and
to cure and supply the defect of non-rental or mill-
reftal; and the act is an authority that the King might
grant at his fole discretion; for the letters patent good,
which were granted before; per Holt Ch. J. Mich. 7
Will. 3. B. R. Slin. 606. In the Bankers cafe.

The faid flat. 22 Car. 2. cap. 6, fett. 6, enelts, That the
tr evaluors and the furvivors or fuccessors of them, shall
execute to purchasers, indentures of bargain and fale,
containing a conveyance of the faid rents, and reciting
the confideration of money paid, which fhall be inroll’d in
any of the four courts of Writmifler, within fix
months after the date thereof.

Sect. 11. Instructions to be oberved in the fale of their
rents, yet fo as the non-performance of them shall not
weak’ned purchasers titles.

1. Contrads for falles fhall be figned by the Lord Treafu-
rer or commissioners of the treafury, or two of them.

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

3. Every contractor fhall, or on before felling his con-
veyance, affure one moiety at laft for his purchafe-money
into the Exchequer; and before he receives his conveyance
give fuch fecurity as the Lords Treafurer or commiffion-
ers, &c. fhall approve for the other moiety.

4. Such a fay down their whole money, fhall be al-
low’d for prefent payment of their fecound moiety, not
exceeding the rent 12 1/2.

5. Immediate tenants liable to pay any rents, fhall be
pref’nd in the purchafe of it before others, fo as they
tender themfelves to the Lord Treafurer or commiffioners of the
treafury, to convey within fix months after pay-
ning the fad patent, and notice thereof publi’d by
published their conCla, or pay the fum to the money within fix months after, as 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 perfect his conveyance, all benefit of per-
formance to be loft.

7. The purchaser may have his conveyance in the
names of any perfon he fhall defire.

8. If any rent be charged with an incumbrance, con-
ideration fhall be had of it and reprim’d allowed; and the
purchafe fhall covenant to take upon him fuch incum-
brance.

9. The tritefes fhall hold the rents to the King’s use
still fale.

10. The tritefes covenant with the purchafers
against their own act. And by flat. 22 & 23 Car. 2.
c. 24, fett. 9. The tritefes are impowered to convey
the fame rents to purchafers either by the words expref’d in
the letters patents, or by particulars to be made by the
auditors, or by the original grants from the crown, favoring
the Queen’s right to the rents hereby vell’d.

22 Car. 2. c. 6. fett. 7. enelts, That purchafers fhall
hold the fame difcharged of any breach of truth, which
may be pretended to be committed by the tritefes, and
may recover from them the rents they fhould, it might, excepting
the prerogative procures outside of the Exchequer.

Sect. 9. Purchasers of rents referred by any letters pa-
tents of lands and tenements, &c. and sold after the paf-
ning of this act, fhall enjoy them; any canceling, avoidance,
or determination of fuch letters patents notwithstanding.
This act fhall not be concul’d to avoid any covenants or incumbrances on the King’s part, in the or-
iginal refection of fuch rents; nor does the act in the court
of Augmentation or court of Exchequer before the 23d of
October 1624, or fince the 29th of May 1660, whereby
fee-farmers were to be difcharged, and allowances out of
the fad fee-farm rents to be made.

To encourage purchasing fee-ferm rents, this act gives
the purchafers the fame power of diftraits not only on the
land out of which the fee-ferm rents illue, 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 Co-
ventry.

Fee-ferm rents, when granted by the King, become
rent-foek, and therefore not to be extended. Arg. 9
Med. 72. cites Gra. 8. 656. — Fee-ferm rent is ex-
tended upon an eligif, and yet the words of the fature,
which give the fiefi authority, are only land, viz.

A. clears a fee-ferm rent under this fature, and there is
a folution from the land, out of which the fee-ferm
rent illue: the court cannot order the fecretactors to
pay the arrears out of the money in their hands, but
decies the grantor might take his remedy at law notwith-
ftanding the folution. Per Cooper C. Hill. 1715.
2 Vern. Att. Gen. v. Mayor, &c. of Coventry. The court
lefs him to diftrain and fale, but the defendant’s law, without
incurring any contempt in equity, and that no fee
or eftate derived under the fecretactors, should be made use
of in evidence againft the claimant of the fee-ferm rent,
to prevent the diftraits. Wind’s Rep. 308. S. C. Tho
the King might diftrain on any other lands of his tenant,
as well as to the fad which out of which the rent illue; yet,
if the tenant alien or leafe at will only his other lands, the
crown cannot diftrain on thofe lands. Hill. 1715. Arg. 2
Vern. 714. Att. Gen. v. Mayor, &c. of Coventry. S. P.
held by Cooper C. affiled by the Lord Ch. J. Parker

So, if there be an extent upon an eligif of fuch other
lands, the bafs on the chafes or lands on which the tenement
will not be liable; for this is a greater eftate than an
eflate at will. Per Cooper C. affiled by Ch. J. Parker

As to the cafe of the Att. Gen. v. The Mayor of Co-
ventry, the Reporter fays, that afterwards Ch. J. Parker
informed him, that he thought it might have been proper
to have determined, that the folution was as
the band of the court upon the eftate, and where a right
to a fee-ferm rent appear’d to be prior and indifputable,
the court might reasonably enough have order’d payment,
celfe A. for aught appear’d, would be in a worfe condi-
tion, than if there had been no folution; for till the
folution was taken, the corporation paid the rent voluntarily,
and now are disabled purely by the folution; and
putting A. to diftrain was putting the charge of the fuit
upon the eftate; 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. Wind’s Rep.
308, 309.

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

Sect. 9. enelts, That rent not usufally paid by the
greater fpace of 40 years fmall paft, fhall not be inferred in
fuch letters patents, and tenants fhall hold their lands dis-
charged of any rent, referved by virtue of any patent of
concumbrance, or commiffion of defecive titles, and usufally
paid
paid by the greater force of 40 years, until the same shall have been recovered by due course of law.

And by sect. 11. So much as is due for any uses out of the premises to be settled upon trustees shall continue to be paid; and the trustees are hereby authorized to convey, for performance of such uses, both of the said fees of 20s. &c. the said amount to the sums charged, after which conveyance the purchasers of the residue to be discharged thereof.

By 22 & 23 Car. 2, 21. sect. 4. Till file of the said rents, the receivers of the King's revenue shall gather the same.

Stat. 9 & 10 W. 3. 8. Subjected fee-farm rents to payment of taxes.

Stat. 7 Geo. 2. 7. sect. 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 &c. due thereon to be allowed by the persons intituled to the rent without fee or charge for such allowance.

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

Stat. 23 & 24 Car. 2. cap. 2. sect. 8. All purchasers may make a general justification without producing any letter of the present, saying that the trustees were feigned in fee, and so granted to them. And by Stat. 18. c. 18. sect. 4. Where any fee farm rents, intended by the acts of 22 Car. 2. and 23 & 24 Car. 2. to be hold, and which are held pursuant thereto, shall be named and described in any deed or fine, declaration, or other pleading, by the names or descriptions, as the same were described in the inventories 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.

Stat. 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 FEUDI. (Fræds or feuda.) Signifies in the German tongue, guerre, that is, capite inimiciis. Histoire Diput. de Flandres, cap. 2. Lamb. in his Exposition of Saxon words, writes it feith, and faith likewise, that it denotes capite inimiciis: And also that the word now used in Scotland, and in the North parts of England, is the same, that is, a combination of kindred, to revenge the death of any of their blood against the killer, and all his race. See Skene de vorke, sigl. vorke Alphavit.

Stat. 27 Geo. 2. 3. sect. 1. Provided, that the privileges and immunities of the French who have to do with the administration of justice, as a recompence for their labour and trouble; and these are either aforesaid by acts of parliament, or established by ancient usage, which gives them an equal function with an act of parliament. New Act. 403.

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.

3. 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. This was not received from the King.

Ca. Lit. 30. 2. 21. Sect. 166. 268. 9.

And this fundamental maxim of the Common law is confirmed by Ufifm. 1. cap. 26. which enacts, that no sheriff, 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 both shall yield twice as much, and shall be punished at the King's pleasure. This statute comprehends sheriffs, coroners, bailiffs, gaolers, the King's clerk of the market, auditors, and other inferior ministers and officers of the King, whole offices and duties 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 preceptual whatever, which have been con-

trary to it, have been held void; as where by pre-

scription the clerk of the market claimed certain fees for the view and examination of all weights and measures, and it was held merely void. 4 Infr. 274. 34. 523. 2 Infr. 209. 2 Rol. Abr. 226.

For it hath been held by the King's common called the bar fee, which hath been taken time out of mind, by the sheriff, of every prisoner who is ac-

quitted; and also the fee of one penny, which was claimed by the coroner of every vigint, when he came before the juries in 204, are not within the meaning of the flature, because they are not demanded of the sheriff or cor-

oner for doing any thing relating to their offices, but claimed as perquisites of right belonging to them. 2 Infr. 210. Stean. P. C. 49.

All is it held by my Lord Coke, that within the words of the statute 34 Ed. 1. which are, No talleys or aid shall be taken or levied by us or our heirs in our realm, without the good will and assent of archbishops, bishops, earls, barons, knights, burgesses, and other free-

men of the land; no new offices can be erected with new fees, or old offices with new fees; for that is a tal-

lage upon the subject, which cannot be done without common consent of parliament. 2 Infr. 323.

But yet it is held, that an office erected for the pub-

lisc good, tho' no fee is annexed to it, is a good office; and that the party, for the labour and pains which he takes in executing of it, may maintain a quantum meruit, if not as a fee, yet as a competent recompence for his trou-

ble. After all, the statutes of Skene's cafe.

All fees allowed by acts of parliament become esballified fees; and the several officers intituled to them may main-

tain actions of debt for them. 2 Infr. 210.

All such fees as have been allowed by the courts of justice to their officers, as a recompence for their labour and attendance, are esballified fees; and the parties can't be deprived of them without an act of parliament. Ca. Lit. 358. Prea. Chanc. 551.

Where a fee is due by custom, such custom, like all others, must be reasonable; and therefore where a per-

son libelled to the spiritual court for a burning fee due to him for every one who died in his parish, that burial in another; the court held this unreasonable, and a prohibition was granted. Hob. 175. 1 Rol. Abr. 557. 559. S. C. adjudged.

So where a French protestant had his child baptized at the French hospital at the Snyry, and the vicar of St. Martin's, in which parish it was, together with the clerk, libelled against him for a fee of 21. 6d. due to him, and 11. for the clerk; and a prohibition was granted; and in this case it was held by Holt, That no fee could be due but by custom, and that a custom for any person to take a fee for chriftening a child when he does not chriften him, is not a perquisite of his office; yet, if the vicar, or the chriften, should have libelled for that right. 1 Salk. 332.

The plaintiff brought an action of the cafe for fees due to him as Uther of the Black Rod, and obtained a verdict. Stanc. 7. 17. 15. 16. Gen. 28.

No fee shall be taken for a report upon a reference from any court, 1 sect. 1. c. 10.

Certain fees of shriffes settled, 3 Gen. 1. c. 11. sect. 10. 20. See Sheriff.

Fees on ass. prior records out of the Exchequer to be the same fees as on other records, 22 Gen. 2. c. 26. sect. 10.

Fees of justices clerks to be regulated, 26 Gen. 2. c. 14. 27 Gen. 2. c. 16. sect. 4.

Debt lies for the shriffes fees for executing an eligit.,

Lord Raym. 1212.

As to the quantum of the fee due, it must be observed in general, that a man has no execution for fees, but to take more for executing his office, than is allowed by act of parliament, or is the known and settled fee in such cafe.

10 Ca. 103. 2. Ca. Lit. 308.

But in this place we shall only take notice of the fees of shriffes for executions, about which there seems to have been the most controversies in our books. And for this purpose we shall recite the 28 Eliz. cap. 4. by which it is enacted, That it shall not be lawful to or
For any sheriff, under-sheriff, bailiff of franchises or liberties, or for any of their, or either of their officers, ministers, servants, bailiffs or deputies, or for any of them, by reason or colour of their, or either of their officers or deputies, to have, receive or take of any person or persons whatsoever, for anything done in the serving and execution of any act or execution upon the body, lands, goods or chattels of any person or persons whatever, more or less consideration or remuneration than in this present act is and shall be limited and imposed, which shall be lawful to be had, received and taken; and that is to say, twelve-pence for every twenty thilling, exceeding not one hundred pounds; and six-pence of and for every twenty thilling, over and above the said sum of 10 l. that he or they shall fo levv or extend, and deliver in execution, or take the body in execution for; by virtue and force of any such act or execution, as well upon pain of penalty, 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 lose and forfeit, to the party graved, his trouble; and shall forfeit the execution, and all and every of the money or any part of the money shall do the contrary; the one moiety thereof to be to our Sovereign Lady the Queen, her heirs and successors; and the other moiety to the party or parties that will sue for the same, by any plaint, action, suit, bill or information, wherein no chthon, waiver of law, plea, privity or any other 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 fee, than by the act is limited, &c. that herein by implication at least, if not by express words, a right is given to 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. 4 M. & B. 535. 12 Man. 179. 40 L. & T. 175. Palm. 400. 1 Salt. 331. S. P. admitted.

2. It hath been adjudged, that the sheriff shall have a flilling per pound for the hundred, and a fix-pence per pound for every hundred exceeding a hundred; and sixpence 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 the more because the laws, with regard to sequestration, or those who before were backward and intimidated, by reason of the danger they run from escapes, &c. from engaging herein; and therefore it has been held the most reasonable construction to allow them their fees in proportion to such danger. 4 B. & P. 173. 1 L. & T. 178. 12 Man. 179. 40 L. & T. 175. Palm. 400. 1 Salt. 331. S. P. admitted.

3. It hath been resolved, on the proviso 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 intitled to his fees, pursuant to this statute, as if the execution had been done in any part of the county at large; and for herein the sheriffs run as great a risk, and his trouble is as great; but where both the judgment and execution are within a liberty, although the sheriff cannot be preferred to be attended with equal difficulty; and therefore the proviso in the statute excludes them. 4 B. & P. 173. 1 L. & T. 178. 40 L. & T. 175. Palm. 400. 450. 460.

4. It hath been resolved, that the bailiff of a liberty, where a judgment given in Westminster Hall, is intituled to the fees, within the words and meaning of the statute; and not the sheriff of the county who directs his precept to him. 22 Eliz. 179. 2 Salt. 359.

5. It seems agreed, that if a sheriff makes an extent, and before the liberate a new sheriff is chosen, the new sheriff shall immediately be informed by the statute. 22 Eliz. 179. 2 Salt. 359.

6. It hath been resolved, that the statute does not extend to real executions, such as habere facere fessamin, or pyfifmmum, but only to executions in personal actions; also it is said, that the statute does not extend to executions upon hommo-merchant, recognizances, &c. and that the act is to be understood of sales where the judgment reditor is in invitum, and not by the voluntary conciliation of the party; but the Lord. Salt. 331.

7. That for executing a capias uitatum, or for a warrant to execute it, no fee is due to the sheriff, because this is at the suit of the King. 1 H. 2. 2 Brow. 340.

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 one in execution dies, and a fieri facias issues against his goods, the sheriff shall have his fees for any part of executing the fieri facias; for his trouble was as great as at full. 1 Salt. 331.

2. At what time fees shall be due, in what court to be recovered, and pleadings in actions for fees. It is exaction 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 indict him for extortion. 1 C. L. & R. 362. 2 B. & T. 330. officer must obey a writ, though fees unpaid. 1 C. L. & R. 362. Proced. must be obeyed though fees are not tendered. 1 C. L. & R. 362.

If an abbas corpus ad judicialem is directed to a gaoler, he must bring up the prisoner albo 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 H. 2. 727. 3 P. 57. Also it is no excuse for not obeying a writ of an abbas corpus ad judicialem & recipiendum, that the prisoner did not tender him his fees. 1 M. & B. 119. 2 D. 280. 2 M. & B. 179. but 1 M. & B. 119. 120. 121. 122.

But the fact that a gaoler brings up the prisoner by virtue of such an abbas 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 capable to find his prisoner subsistence. See 2 C. L. & R. 330. C. L. & R. 255. 9 C. L. & R. 99. 1 Hil. 356. 2 C. L. & R. 27. 2 C. L. & R. 178. If a person pleads his pardon, the judges may adjourn the usual fee of gloves to themselves and officers, before they allow it. F. C. C. 394. 1 Hil. 356. 1 Hil. 452.

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

It seems to be laid down in the old books as a distinction, 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 elget he is not to have them till the liberate. 1 P. & M. 156. 2 Will. 1 S. P.

But where the sheriff, having executed an elget, 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 leave the execution; it was held by H. C., that there was the same reason for the fees for executing an elget as for an extent; for upon an elget 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 elget, or the return of which the plaintiff may enter, yet by the return he becomes
comes tenant by "elevit," and may maintain an ejectment, and affign his interest upon the land; but the defendant continuing in possession after the return of the writ turns the plaintiff's eject to a right, and therefore he must enter to affign; and his being put to an ejectment is no reason, for in case of an extent upon a flat, where the "liberate is distinct, he can't enter by force; it is true he may without force, and fo he may here; and Peowell said, that extent generally is the word of the statute 28 Eliz. 2. But an extent upon no legiti- mate issues within the flat, as well as an extent upon a flat.

1 Salk. 333.

A folioct in Chancery may exhibit his bill for his fees for business done in that court; and fo he may where the billings is done in another court, if it relates to an- other demand that makes in Chancery. 1 Vern. 203. 2 Chan. Ct. 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 Leon. 268. 2 Rep. Rep. 59. 1 Mod. 107. Kel. 615. 3 Kel. 302. 442. 4 Mod. 25. 5 Mod. 242.

As where the registrar in the ecclesiastical court libelied there for 41. 6. for his fees, and proceeded to excom- munication; and the defendant fuggelled, and moved for a praetice, which was granted; for the court hath no power to compel the party to pay his fees to their officers, but they must be paid by their quantum meruit to the parish; and if the de- fende be a freehold, they may bring an assize; for the de- nial of just fees is a definicion; 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 officers that attend them. 1 Salk. 333.

So a prohibition was granted to play a fuit in the arch- deacon of Litchfield's court, against churchwardens for a fee for swearing them, and taking their pre sentments; because no fees could be due but by custom, or for work done, in which case a quantum meruit lay. 1 Salk. 330. So in Reg. B. 2 and 3. and chapter of the cathedral church of Exeter, having the freehold and inheritance of the said church, had by prescription 10l. for every corps that was buried in the said church; and the defendant's tellator being buried there, without their licence, the defendant refused to pay the 10l. for which they sued him, and the court of common law, and after finding that why a prohibition should not go, it was urged, that none can prescribe to have a burying-place in a cathedral church, for the parishioners 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 pre- scrition and the profit, and the churchwardens have a right to be buried without a prescription; but the court held, admitting, that no person can prescribe to bury in a cathedral church, and admitting, that this fee, like that of 20l. 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 con- fendant usage to pay so much given in evidence; and there- fore the prohibition was granted. 2 Bac. Atr. 468. Hil. 5 Ann. Dean and Chapter of Exeter v. Druc. 1 Salk. 334. S. C.

A prohibition was moved for the convenerly court of the bishop of London, to play proceedings in a suit com- menced 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 chose by the parson, and that his office is ecclesiastical, and consequently his fees are of ecclesiastical cognizance. On the other hand it was urged, that the work was done in a secular manner, the office is merely temporal, and the profits of it shall be as well like, 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 eflate 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 Breoun. 38. And if so, his salary, or whatever is given for the service of that office mulf of consequence be of temporal conuenance. But whether his office be temporal or spiritual, if the matter in demand is tem- poral, the ecclesiastical court can have no jurisdiction. 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. Atr. 155. Hill. 12 Gro. 2 C. B. Pitts v. Evans.

If A. delivered an execution to the sheriff at his suit against B. and in consideration that the sheriffs 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 statute of the 28 Eliz. Glower. J. held the consideration not good, for at Common law he might not to take any fees, but it was ex- tortion, which the statute is only to discharge the sheriff from; but the other justices and barons held it to be a good consideration, and were of opinion to have affirmed the judgment. But another error being affigned, viz. that the "tales de circumstantialia" was returned by the plaintiff who brought the action by the name of the sheriff of the county, and therefore judgment was re- vened. Cre. 6. 65. Hill. 42 Eliz. B. R. in Cax. Sacc. Statuon v. Sidor.

In the settling a dispute, whether the warden of the Fleet might return a non of inventes whereunto to found a fequestration, or such return must be by the fer- jent at arms before a fequestration could go, Lord Chancell- lor ordered the sheriff to look into precedents, to parli- ments books to the newwarden's, &c. twas afterwards and for cause against the motion, that twas new, and the like had never been made before in this court; but twas infitned on, that the old churchwardens had a right to keep the books, and so the rule was discharged. For a contet between parli officers, which of them ought to keep the books, must be tried at law by a returned juries. 8 Mod. 98. Mich. 9 Gro. 1. The King v. Street and Stroud.

In such cases, which are merely local, and the victors can't be altered, they will, upon good reason, make them try it upon a feigned action, and if no content be, they will grant inst; \( Per Pemberton Ch. J. Poafh. 34 Car. 2. B. R. Skin. and the in case of 3. B. R. Grayham. And Deben J. remembered the case of Lord Gerard of Bromley and Spencer in the Exchequer, when Hale was Chief Baron, who, upon affidavit, that the plaintiff had lived long in Lancashire, and kept good hof- pitality, and bid every body welcome, &c. and the de- fendant was a southern gentleman, and lately come into Lancashire, Hale did not suffer them to proceed in their ejectment in Lancashire, but made them try it in five feigned actions by a jury of Heresfordshire, Skin. 44. Poafh. 34 Car. 2. B. R. at Jup. See Finet.

Fifina, A small bundle, an armful. Cowell. edd. 1727.

Felagius (\(Quod fide cum eo ligatus\)) A companion, but particularly a friend who was bound in the deernary for the good behaviour of another. So in Legibus Iunc., c. 15, "his faid, if the murderer could not be found, &c. the parents of the deceased should have fix marks, and the King forty; if he had no parents, then the Lord should give it: \(Bi fide dominium non habetur, felagium sigit.\) Cowell. edd. 1727.

Feld is a Saxon word, and signifies a field, and there- fore, feld eric is a country field, feld boxe is a tent: In its compound it signifies wild, as field huning is wild honey, feld mynt, is wild mint, &c. Cowell. edd. 1727.

Fide homages, I. e. Faithful subjicts, from the Sax. fax, i. e. fide. Cowell. edd. 1727.

Fело
F E L

Felo de se, or felon of himself, is a person, who being of found mind, and of the age of discretion, voluntarily kill himself. 3 Inst. 95, 96. If a man is found by a wound, intending to be felo de se, and die not within the year and day after the wound, he is not felo de se. 3 Inst. 54.

A person who willfully destroys himself is termed a felo de se, and is said to be guilty of the worst sort of murder, as he acts against the fifth and one of the four, with which the life of man is forfeited. Pleas 261. Dame Hul's case. Yet in some cases it is considered as a different offence from murder; and therefore if the King pardin all crimes, except murder, this offence shall be pardoned; for though in a first felony it may be called murder, yet according to the modern construction 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 differently treated of by authors who have wrote of these matters, as Staun. P. C. 185, &c.

Besides, the end of excepting 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 forfeiture, 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. adjudged, that a man in common law, where a man taken as a distinct offence from other felonies; and therefore a grant of bona & catalla felonam will not carry the goods of a felo de se. 1 Sid. 420. 1 Vent. 32. 1 Sund. 274, adjudged.

No person can be felo de se, who under the age of discretion, or non comas 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. Cram. 30, 31. H. P. C. 28. 3 Inst. 54.

In 3 Med. 100. it is said to be the prevailing opinion, that a person who kills himself must be non comas of course, on this supposition, that it is impossible a man in his fenes should do a thing so repugnant to nature; but in 1 Hawk. P. C. 67, and in Comb. 2. 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; and for instance, that of a mother murdering her child, which is also against nature and reason: And this consideration, who is taking the protection of a crime, who should make it no crime at all; for it is certain a person non comas 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 burfs and kills 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 these cases A. is felo de se, for he is the only agent. Bro. Carn. 12, 14. Dolt. c. 92.

But a man is killed by hastily running on a knife or sword, which a person assaulted by him, 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. Staun. P. C. 16. H. P. C. 28. Pult. 110. 6. Cram. 28. cont. 3 Inst. 54.

If one person kills another, then by his desire and intent, if the person killed is not a felo de se, but he who killed him is as much a murderer as if he had acted it of his own head; for every affent of that kind is void, being against the law of God and man. Keilh. 136.

But if two persons agree to die together, and one of them, at the perfuasion of the other, buys ratbane, and mixes it in a potion, and both drink of it, and he who bought and made the potion survis, 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. 154. pl. 1041. 1 Hawk. P. C. 68.

No person can be a felo de se before he is found Such, by some inquisition, which ought regularly to be by the coroner, super vigium corparis, if the body can be found. H. P. C. 26. 3 Inst. 55.

But if the body can't be found, so that the coroner, who has being of found mind, super vigium corparis, 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 said court sits, and such inquisitions are traversable by the executors, &c. 3 Inst. 55. H. P. C. 29. 2 Lev. 141. 1 Hawk. P. C. 69.

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 otherwife 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. Bram. Cram. 151. 2 Lev. 141, 152. 2 Keb. 859. 2 Jen. 198. 1 Vent. 278. 3 Keb. 504, 506, 604, 800. Stin. 45.

All inquisitions of this offence, being in the nature of indictment, are accordingly, and certainly to be formed of 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 Solk. 377.

And therefore if either the premises be insufficient, as if it be found that the party thung himself into the water, &c. fe. fe ipsum emergit, which is nonsensfe, because emerges signifies only to rise out of the water; or if there be wanting the proper conclusion & fe. fe 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. 152. 1 Sid. 225, 255. 1 Keb. 907.

A felo de se forfeits all chattels real and personal, which he hath in his own right, and also all 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 also the vender of merchandise, to which he was intituled jointly with another, or any account, except that of merchandise; but it is 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. Staundf. P. C. 188, 189. H. P. C. 29. Pleas 243, 262. Cram. 31. a.


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

Alfo no part of the personal estate is vested in the King before the fell-murder is found by some inquisition, and consequent that the forfeiture thereof is registered in the offence before such finding. 5 Co. 110. 3 Inst. 54. 1 Staund. 352. 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 inquisition is found, and all other intermediate alienations are avoided. Pleas 260. 5 Co. 110.

Felonious goods, (Bona fugitivorum) Are the goods of a felon, who fled 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 premission; but if a man may prehend to have ways, etrangers, treukes, trove, wreck of the sea, because they may be gained by usage without matter of record. 5 Req. 109 b.

The flat de Prærag. Reg. (17 Ed. 2. c. 1.) grants to the King, among other things, the goods of felons and fugitives.
The archbishop of Canterbury had felons 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 fel de fr. Hales, a letter for years, was fel de fr. in the manor, and notwithstanding 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 reckoned in such grant to B. G. 2 Mar. Dyer 107.

Where the King granted to a man and his heirs, felons 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 leaved of a manor, to which a lease or wait, or efrays are appendant, tho' they are of no yearly value, yet he shall have the devise 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 steals goods, and hides them, and afterwards by, these goods are found on his or her waifs in law; for those are when the felon hath the goods about him, and being closely purfued, leaveth them for fear of being taken, and that he may more readily get away; in such a case the goods are forfeited, but in the other case the owner may take them wherever he finds them. 5 Rep. 100, Payne’s case.

Qua sententia, &c. for claiming felons 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. 5; by which all the privileges lawfully used by the abbots, were revived and vested in the King; who being seized of the said privileges and franchises, to have felons goods in R., he granted the manor of W. in R. parcel of the possessions of the abbey to B. G. & to, talia & tanta privilegia as the late abbot had, under whom the defendant claimed the said manor by seisin, & to warrants clamat libertates & franchises tenuam manum prae dictae feftiae; adjudged, that because the defendant had conveyed to himself a title to the manor, &c. by seisin, which he pleaded generally, without setting forth the deed, he did not convey to himself a title to the felons goods, for they will not pass without a deed; but if the King had granted the manor to B. G. & bone & bone & bone et felonia dicta manum prae dictae feftiae, they pass, tho’ they cannot be appertain to a manor. 9 Rep. 23, Abbot de Strata Marcella, Mor. 297. S. C. by the name of The Queen v. Vaughan.

The plaintiff being committed upon suiposition, that he committed felony, the money which he had about him was seized upon as a conviction, and he ought an action of trofafe, and declared for feizing his money, &c. and this was upon the 1. R. cap. 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 arrest of judgment, that this case was not within the statute because money was not goods; but it was adjudged to the contrary; and note here. Ex. 414. Q. D. v. Wendall. See Flight.

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

Felony, says Lord Coke, Ex vi termini signiftis quidlibet crimen capitale tales animo perpetuum, (i.e. every capital crime perpetrated with an evil intention,) in which theft murder is said to be done per felonia, and is for appropriated by law, that felonia cannot be expresed by any other word. And in ancient times this word felonia 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 the Great seal, and of the King’s coin, &c. was pardoned. But afterwards it was reliev’d, that in the King’s pardon or charter, this word felony should only extend to common felonies, and that high treason should not be comprehended 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 commisions, &c. is included petit treason, murder, homicide, burning of houses, burglary, robbery, rape, &c. chancemercy, je defendants, and petit larceny. For such of these crimes as for the which any such have this judgment, To be hanged by the neck till he be dead; he shall forfeit all his lands in fee-simple, and his goods and chattels: for felony by chancemercy, or je defendants, or petit larceny, he shall forfeit his goods and chattels, and no lands of any estate of freehold or inheritance. And all felonies punishable according to the course of the Common law, are either by the Common law, or by statute. Co. Lit. 391.

Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misnaming version; as when persons break open a door to execute a warrant, which will not justify such a proceeding; Affititia enim sua nama imponit spera tuo; item crimen non contrabibitur nisi necendis 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 miffed its effect through some accident, which no way left the will of the offender to be considered; but it seems agreed at this day, that felony shall not be imputed to a bare intention to commit it, yet it is certain that the party may be very feverely 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 removed by the coroner, Acris. Exon. 14 Ed. 1.

Breaking prison felony, only where the prison was in custody for another felony. 4 Hil. 3. c. 12.

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

Felons goods and lands shall not be feized before conviction, Stat. de CaUell. felon. inserti temp. 1 R. 3. c. 3. His chattels shall be forfeited on the return of a non est inventus, 25 R. 3. c. 5. c. 14.

Proces again felons goods.

One charged in the Exchequer with felons 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 retorred upon the attender of the felon, 21 H. 8. c. 10.

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

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

The clerk of the aile, &c. shall certify the names of the felons convicted into the King’s Bench, 34 & 35 H. 8. c. 14.

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

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

Perfons guilty of felony in imbeffalling fowers may make defence by wittences, 31 Eliz. c. 4.

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

Further intituled to 40/. reward, on tendering certificate of conviction, 5 Ann. c. 31.
2. Felonies within clergy.

Armour. Imbezzling it, 31 Eliz. c. 4. See Felonies without clergy in this title.

Offences. Afflicting persons with intent to tear or spoil their clothes, 6 Geo. 1. c. 23. feft. 11. See Robbery under this division.

Bridge. Defrauying London bridge, 29 Geo. 2. c. 40. feft. 6. See Felonies without clergy.

Or Water bridge, 20 Geo. 2. cap. 22.
Or Hampton-Court bridge, 23 Geo. 2. c. 37. feft. 12.
Or Rother bridge, 24 Geo. 2. c. 36. feft. 31.
Or Sandwich bridge, 28 Geo. 2. c. 55.
Or Why bridge, 24 Geo. 2. c. 73.
Or Black Friars bridge, 39 Geo. 2. c. 86.
Or Jeremy Ferry’s bridge, 30 Geo. 2. c. 59.
Or Old Brentford bridge, 30 Geo. 2. c. 63. feft. 19.
31 Geo. 2. c. 46.

Bail. Perusing bail before commissioners in the country, 4 W. & M. c. 4. feft. 4. See Felonies without clergy.

Bigamy. See Polygamy.

Blacklead. See Lead.

Burning. Farms of timber, 37 H. 8. c. 6. feft. 2. repealed by 2 Ed. 6. c. 1. 1 M. feft. 1. 1.

Stacks of corn, houfe, &c. in the night-time, 22 & 23 Car. 2. c. 7. feft. 2. See Felonies without clergy.

Cattle. Killing them in the night, 22 & 23 Car. 2. c. 7. feft. 2. See Felonies without clergy.

Clay. Stealing it, or wood, left to dry, off the ten- ters, &c. the third offence, 15 Geo. 2. c. 27. See Felonies without clergy.

CORN. Defrauying granaries, the second offence, 11 Geo. 2. c. 22. See Felonies without clergy; and see Burning, ante.

Counsell. See King.

Copper. See Mining, Lead.

Criminals. Running goods five in company armed, 8 Geo. 1. c. 18. feft. 6. See Felonies without clergy.

Assembling armed to the number of three for running goods, 9 Geo. 2. c. 35. feft. 10.

Penfons deemed smugglers according to the definition of 9 Geo. 2. c. 35. feft. 13.

Harbouring offenders against the laws of customs, 11 Geo. 2. c. 34. feft. 9. See Felonies without clergy.

Dikes. Cutting them in marsh land, 22 H. 8. c. 11. 2 & 3 P. & M. c. 10.

Ejacs. See Prisoner.

Fishing. Catching fish in another’s pond with intent to steal, 31 H. 8. c. 2.

Fishing. See Leaks.

Foreign State. Serving it without taking oath of allegiance, 3 Geo. 1. c. 4. feft. 18.

Forgery. Of bank bills, 11 Geo. 2. c. 9. feft. 6. —

Of bank notes and indorsements, ibid. See Felonies without clergy.

Gaoler. Foreign prisoner to be changed to a good subject, 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. —

Refusing such offenders, ibid. See Felonies without clergy.

Iron bar. Stealing them, fixed to buildings, 4 Geo. 2. c. 32. See Lead.

King. Conspiring or designing to destroy him, or any of his council, 3 H. 7. cap. 14. See Felonies without clergy.

See Priests.

Lads. Confederates of masons to prevent the statute of labourers, 3 H. 6. c. 1.

Lead. Entering mines of black lead with intent to steal, 25 Geo. 2. c. 10. feft. 17.

Stealing it, fixed to buildings, 4 Geo. 2. c. 32.

Receivers of lead or lead, ibid. feft. 3.

Buying or receiving lead, iron, copper, brass, metal or folder, knowing it to be lead, 29 Geo. 2. c. 30. Penalties upon having these materials without being able to account for them, 29 Geo. 2. c. 30. feft. 6.

N.B.

Felonies. See Felonies without clergy.

Marriage. Sillentizing it clandestinely, 20 Geo. 2. c. 33. feft. 8. See Women.

Mariners. See Masts, Seamen.

Mails. Transportation of siver, 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.

Cointing or bringing in gally-half-pence, fuits or dodkins, 3 H. 5. c. 1.

Payment of blanks, 2 H. 6. c. 9. Olf.

Blanching, &c. or putting off counterfeit money, 8 & 9 W. 3. c. 46. feft. 6.

Muteny. In mariners, hindering commanders from fighting, 29 Car. 2. c. 11. feft. 9.

Officers, &c. defrauying ships, ibid. feft. 12. See Felonies without clergy.

Officer or officer upon or beyond the sea raising mutiny, disobeying or refiling superior, by 2 & 3 Ann. c. 20. feft. 35.

Palaces. Entering into King’s house with intent to steal, 33 H. 8. c. 12. feft. 27.

Plague. Permons infected with it going abroad, 1 Jac. 1. c. 31. feft. 7.

Plygamy. By 1 Jac. 1. c. 11.

Priest. Affailing one committed for treason or felony (except petty larceny) to attempt an escape, 16 Geo. 2. c. 31. See Gaoler.

Prize. Opposing the execution of it in any pretended privileged place, 9 Geo. 1. c. 28. 11 Geo. 1. c. 22. See Felonies without clergy.

Purveyance. In some cafes by 28 Ed. 1. fl. 3. c. 2.

N.B. Purveyance is taken away by 12 Car. 2. c. 24.

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

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

Rejoin. Refusing the body of an offender executed for murder from the sheriff or surgeon, 25 Geo. 2. c. 37. feft. 10. See Felonies without clergy.

Hunters. Spiritsuous liquors.

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

Adjudged.
Adjourned to the galleries returning without licence, 39 Ed. c. 4. 1 Jac. 1. c. 7. & 25. repealed by 12 Ann. b. 2. c. 73.

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

Affecting with intent to rob, 7 Geo. 2. c. 21. sect. 1. Seamen. Deferting, 5 El. c. 5. sect. 27. See Felonies without clergy.


Scurvies. Taking their master’s goods at their death, 23 H. 6. c. 1. If in use? Affecting, Mfr. master, woollen or Weaver, 12 Geo. 1. c. 34. sect. 6.

Imbazzling goods delivered to them of the value of 40 l. 21 H. 8. c. 7. per by 5 El. c. 10. Appar- tices under 18 excepted, 21 H. 8. c. 7. sect. 2.

Sheep. Exporting them alive, the second offence, 8 El. c. 3. sect. 2. See Felonies without clergy.

Ships. Deferting them, 22 & 23 Car. 2. c. 11. sect. 12. See Murther, and Felonies without clergy.

Shires. See Law.

Smuggling. See Customs.

Spirituous liquors. Refusing offenders against the acts concerning these liquors, 11 Geo. 2. c. 26. sect. 2. 24 Geo. 2. c. 49. sect. 28.

Sned. goths. Buyers or receivers of them, 5 Ann. c. 31. sect. 5.

Taking a coward to help one to roben goods (if he do not apprehend offender) in some cases, 4 Geo. 1. c. 11. sect. 4. See Felonies without clergy.

Stoves. Imbazzling them to 20 l. value, 31 El. c. 4.


Turnpikes. Deferting them, 5 Geo. 2. c. 33. See Felonies without clergy.

Waterman. Carrying greater number of passengers than allowed, if any passenger be drowned, 10 Geo. 2. c. 31. sect. 9. See Felonies without clergy.

Wine. Firing them, 1 Geo. 1. c. 2. sect. 48. sect. 49. See Felonies without clergy.

Wool. Expiration of it, other than to the staple at Calais, 18 H. 5. c. 15.

Transporting of it out of England, Wales or Ireland, 17 & 14 Car. 2. c. 18. altered by the 7 & 8 WII. c. 3. &c.

28. See Cloth, and Servants ante.

3. Felonies without clergy.

Acquittance. 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, 23 H. 8. c. 1. 5 & 6 Ed. 6. c. 9. 4 & 5 P. & M. c. 4.

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 withchafit, 1 Jac. 1. c. 12. repe- ted by 9 Geo. 2. c. 4.

Before the fact in procuring any fire, recovery, deed enrolled, statute, recognition, bail or judgment to be acknowledged in the name of another, 21 Jac. 1. c. 25.

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

Before the fact in burglary, deforciation, 3 & 4 W. & M. c. 9.

Before the fact in robberies in shops, warehouse, coach-houses or stables, 10 & 11 WII. c. 3. sect. 23.

Before the fact in piracy, in some cases, 11 & 12 WII. c. 3. sect. 7.

To forging any deed, will, bond, bill of exchange, note, indenture or assignment of bill or note, or any acquittance or receipt, 2 Geo. 2. c. 25. perpetual by 9 Geo. 2. c. 18.

Vol. II. No. 73.

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 25 Geo. 2. c. 54.

Before the fact in stealing cotton, &c. from bleaching grounds, 18 Geo. 3. c. 37.

Before the fact in thefts in 40 l. value in any vessel or in any whale, 24 Geo. 2. c. 45.

Before the fact in destroying London Bridge, 31 Geo. 2. c. 30. sect. 6.

5. Strangling. See Smugglers.


Banks. Destroying them, 6 Geo. 2. c. 37. sect. 5. perpetual by 31 Geo. 2. c. 42.

Bankrafts. Not surrendering, or not submitting to be examined, or concealing or imbrazzling their efectes, 5 Geo. 2. c. 30.


Bedford Level. See Fast.

Black act. Hunting armed and disguised, and killing or stealing deer, or robbing waten, or taking fish out of any river, &c. or any perons unlawfully hunting in his Majesty’s forests, &c. or breaking down the head of any fisf pond, or killing fisf, &c. of cattle, or cutting down trees, or setting fire to houses, barn or wood, or fishong at any peron, or sending anonymous letter, or signed with fictitious name, demanding money, &c. or refucing such offenders, 9 Geo. 1. c. 22. perpetual by 31 Geo. 2. c. 42.

Black lead. Officers committed or transported for entering mines of black lead with intent to steal, eacping, or breaking prison, or returning from transportation, 25 Geo. 2. c. 10.

Black mail. See Cumberland.

Bonds. See Fargery. Robbery.

Beauvoir. See Kithery.

Bridges. Wilful damaging London Bridge, 31 Geo. 2. c. 10. sect. 6. Destroying Wiltshire Bridges, 9 Geo. 2. c. 29. sect. 5.

Or Fulham Bridge, 12 Geo. 1. c. 56. sect. 3.

Burgory. By 25 H. 8. c. 6. 2 & 3 Ed. 6. c. 29. revised by 56 El. 17.

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

Burning. Hovses or barns with corn, 23 H. 8. c. 1. 25 H. 8. c. 52. & 23 Car. 2. c. 7. 43 El. c. 13.


Cattle. See Black Act, Sheep.

Challenge of juries. Challenge above, twenty if the indictment be for such offence for which the offender would have been excluded clergy, if convicted or con- fection, 25 H. 5. c. 3. 4 & 5 P. & M. cap. 4. 3 & 4 W. & M. c. 4 & 5. sect. 3.

Cloth. Stealing it from the rack or tenters, 25 Car. 2. c. 5. sect. 3.

Coals. Firing collieries, 10 Geo. 3. c. 22. perpetual 31 Geo. 2. c. 42.

Corn. Perons transported for destroying granaries returning, 11 Geo. 2. c. 23. sect. 7. See Black Act, Burning, Cumberland.

Councill. See Privy Counsellors.

Cumberland. Forcibly carrying subjests out of Cumber- land, Northumberland, Wijhumland, and Durham, and taking or giving black mail, burning corn, &c. 43 El. c. 13. sect. 2.

Nestorious thieves, or tool-takers in Northumberland or Cumberland (or to be transported at discretion of judge). 18 Car. 2. c. 3.

Coysmen. Perons liable to transportation for offences against the customs, offending again, after having taken G. the
the benefit of the indemnifying aét, 9 Geo. 2. c. 35.
sett. 7. 18 Geo. 2. c. 98. sett. 7.
Perfons, convicted of wounding constable officers,
returning from transportation, 4 Geo. 1. c. 21. sett. 35.
3 Geo. 2. c. 28. sett. 10. See Smuggling.
Cauter'd. See Pickpocket.
Deer. Perfons convicted of second offence in hun-
ting and taking them away, or for coming armed into
a foret with intent to steal them, 10 Geo. 2. c. 32. sett. 7.
7. See Black Act.
Aid. Acknowledging them in the name of another, 21 Jac. 1. c. 26.
Egypt. Remaining in the realm one month, 1 &
2 P. & M. c. 4. sett. 3.
Affiliating with them one month, 5 El. c. 29. f. 3.
East India Bonds, &c. See Forgery, Robbery.
Ecape. See Breaking Prison, Robbery.
Exchequer Order, &c. See Forgery, Robbery.
Fence. Destroying, &c. any of the works in Bedford
Level, 27 Geo. 2. cap. 19. Fide Marches.
Fines. Acknowledging them in the name of another,
21 Jac. 1. c. 26.
Fitch. See Black Act.
Floodgates. See Turnpike.
Fugft. See Black Act.
Forgery. Of deeds on second conviction, 5 El. c.
14. sett. 7.
Of testimonial by justices or officers, 39
El. c. 17. sett. 3.
Of deeds, will, bill of exchange, note, indorsement, or
receipt, on first conviction, 2 Geo. 2. c. 25. sett. 1.
perpetual by 9 Geo. 2. c. 18. and fee 31 Geo. 2. c. 22.
sett. 81.
Of authorities to transfer stock, or perforating pro-
oprietors, 18 Geo. 1. c. 22. Extended to funds establish-
ed since 8 Geo. 1. by 31 Geo. 2. c. 22. sett. 80.
Of order for payment of annuities, or perforating pro-
oprietors, 9 Geo. 1. c. 12. sett. 4. 9 Geo. 2. c. 34.
sett. 8.
Of new stamps, or receipts for monies payable on
indentures, 8 Ann. c. 8. sett. 41.
Of the hand of accountant general, registrar, clerk of
the report-office, or any of the cashiers of the Bank, 12
Geo. 2. c. 37. sett. 9.
Of East India bonds, 12 Geo. 1. c. 32. sett. 9.
Of South Sea common seal, bonds, receipts, or war-
rant, or the dividends, 9 Ann. c. 25. sett. 57. 6 Geo. 1.
c. 4. sett. 56. 6 Geo. 1. c. 11. sett. 50. 12 Geo. 1.
c. 32. sett. 9. and other subsequent aéts.
Of Mediterranea man papers, 4 Geo. 2. c. 18.
Of any entry of acknowledgment of bargain in
bargain and sale in the registry of Yerd, the second
offence, 8 Geo. 2. c. 31.
Of stamp for marking gold and silver, 31 Geo. 2.
c. 2. sett. 15.
Of policies of Royal Exchange and London affurances,
6 Geo. 1. c. 18. sett. 13.
Of debentures, 5 Geo. 1. c. 14. sett. 10.
Of the marks on leaders, 9 Ann. c. 11. sett. 44.
5 Geo. 1. c. 2. sett. 9.
Of the marks on linnen, 10 Ann. c. 19. sett. 97.
4 Geo. 3. c. 37. sett. 26.
Of register or licent of marriage, 26 Geo. 2. c. 33.
sett. 16.
Of the common seal of Bank or Bank notes, 8 & 9
W. 3. c. 20. sett. 36. 11 Geo. 1. c. 9. sett. 6. 15 Geo.
c. 2. c. 13. sett. 11.
Of Exchequer bills, 8 & 9 W. 3. c. 31. sett.
18. 9 W. 3. c. 2. sett. 3. 5 Ann. c. 15. 3 Geo. 1.
c. 8. sett. 40. 6 Geo. 1. c. 4. sett. 91. 9 Geo. 1.
c. 5. sett. 11. 15 Geo. 1. c. 2. sett. 17. 9 Geo. 1.
c. 3. sett. 156. 32 Geo. 2. c. 2. sett. 156.
3 Geo. 1. c. 2. and other subsequent aét.
Of stamps, 5 W. 4. & M. c. 21. sett. 11. 9 & 10 W.
c. 3. c. 25. sett. 56. 9 Ann. c. 23. sett. 34. 10 Ann.
c. 10. sett. 115. 162. 10 Ann. c. 28. sett. 72. 5 Geo. 1.
c. 2. sett. 2. 6 Geo. 2. c. 21. sett. 60. 29 Geo. 2. c. 12.
sett. 21. 29 Geo. 2. c. 13. sett. 5. 30 Geo. 2. c. 19.

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fect. 27. 32 Geo. 2. c. 35. sett. 17. 2 Geo. 3. c. 36.
sett. 8.
Of the hand of the receiver of the preludes, 32 Geo.
c. 2. c. 14. sett. 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.
Forfeiting it from bleeding grounds, 4 Geo.
c. 2. c. 16. 18 Geo. 2. c. 27.
Gad See Breaking Prison.
Helping to steal goods for reward. In some cases, un-
lefs the helper apprehends the offender, 4 Geo. 1. c. 11.
Horn. Stealing from 17 Geo. 8. c. 8. sett. 2. 1 Ed. 6.
c. 4. 12. sett. 10. 2 & 3 Ed. 6. c. 33.
House-breaking, See Robbery.
House. See Burning, Black Act.
Hunting. See Black Act.
Jewft. See Prifon.
Judgment. Acknowledging them in the name of an-
other, 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.
c. 2. c. 16. 18 Geo. 2. cap. 27. See Forgeries 59.
Breaking into shops, &c. to steal or destroy linen,
yarn, or implements, 4 Geo. 3. c. 37.
Locks. See Turnpike.
Latters. See Forgery.
Maid. See Woman.
Maiming. Any person maliciously lying in wait, 22
& 23 Car. 2. c. 1.
Matric. Firing engines for draining them, the sec-
ond offence, 12 Geo. 2. c. 34. 14 Geo. 2. c. 24.
21 Geo. 2. c. 12.
Marry. Wandering without testimonial of justices,
39 El. c. 17. sett. 2. See Forgery.
Departing within the year from the service of those
who took them, to fave them from execution, 39 El.
c. 17. sett. 4.
Marriage. See Women.
Money. Uttering false money the third time, 55.
15 Geo. 2. & 26. sett. 22.
Murther. By 12 H. 7. c. 7. 23 H. 8. c. 1. 25
H. 8. c. 3. 28 H. 8. c. 1. 1 Ed. 6. c. 12.
Mate. Standing mute, or not answering directly, 25
H. 8. c. 3. 1 Ed. 6. c. 12. 4 & 5 Pb. & Mar.
cap. 4. 3 & 4 W. & M. c. 9. 1 Ann. c. 9.
Northumberland. See Cumberland.
Nest. See Forgery.
Robbery.
Ordinance. See Store.
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. 5. 3 & 4 W. & M. cap. 9.
Petty Treafon. See Murder.
Perjury. Perfom convicted of wilful and corrupt per-
jury, escaping, breaking prison, or returning from tran-
sporion, 2 Geo. 2. c. 25. sett. 2. See Prifoners.
Pockpocket. Taking clams & fecrets from the perfon
above the value of 12d. 8 El. c. 4.
8 Geo. 1. c. 24.
Perfon laying violent hands on his commander, to hin-
der him from fighting, Uc. to fuffer as a pirate, 11 & 12
W. 3. c. 7. sett. 9.
Trading with pirats, 8 Geo. 1. c. 24.
Plague. See Quarantine.
Praifon. Of malice prepended, 1 Ed. 6. c. 12.
sett. 13.
Praifon reafons. Refufing to oblige, or not departing
the town within a time limited, or returning without
the King's leave, 35 El. c. 1. fett. 3. 35 El. c. 2.
sett. 10.
Prifoners. They who receive, relieve or main-
tain them knowingly, 27 El. c. 2. fett. 4.
Prifoners.
Prisoners. Taking the benefit of insolvent acts and forswearing themselves, 25 Geo. 2. c. 13. sect. 17. 1 Geo. 3. c. 17. sect. 26. 5 Geo. 3. c. 41.

Relief to deliver up their effects, or concealing to the value of $2. 26 Geo. 2. c. 13. sect. 39. 3 Geo. c. 17. sect. 48. 25 Geo. 2. c. 17. sect. 3.

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

Privy counsellors. They who attempt to kill, or to strike or wound them in the execution of their office, 9 Ann. c. 18.

Principals. Perfons disguised, abetting rioters who oppose the execution of procès in privileged pretended pieces, 9 Geo. 1. c. 28. sect. 3.

Quarantine. Not performing it, 7 Geo. 1. c. 3.

8 Geo. 1. c. 8. 1 Geo. 2. c. 13. 6 Geo. c. 34. 26 Geo. 2. c.

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

Concealing the having infected perfon on board, 2 Geo. 2. c. sect. 3.

Relief to perform quarantine, 26 Geo. 2. c. 6. sect. 8. and perfons entering a lazeret, and escaping before they have performed quarantine, 26 Geo. 2. c. sect. 10.

So preventient of quarantine neglecting duty, 26 Geo. 2. c. sect. 17.

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

Rape. By 18 El. 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. 1.

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. sect. 3.

Rcognizances. Acknowledging it in the name of another, 21 Jac. 1. c. 26.

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

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

Refusing any perfon committed for, or found guilty of murder, or of being in execution, or during execution, 25 Geo. 2. c. sect. 9.

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

Rioters. Allowing to the number of twelve, and continuing together one hour after proclamation, 1 Geo. 1. c. 2. c. sect. 1. Pulling down buildings, 1 Geo. 1. c. 2. c. sect. 5. For hindering proclamation being made, 1 Geo. 1. c. 2.

5. sect. 5. See Proof.


25 H. 8. c. 3. 1 Ed. 6. c. 12. 5 & 6 Ed. 6. c. 9 & 10. In or near the highway, 23 Hen. 8. c. 1. 25 H. 8. c. 3. 1 Ed. 6. c. 12.

In booths or tents in any fair or market, 5 & 6 Ed. 6. c. 9.

In dwelling-houses, shops, warehouse, coach-houses, or stables, 23 H. 8. c. 1. 25 H. 8. c. 3. 1 Ed. 6. c. 12. 5 & 6 Ed. 6. c. 9 & 10. 39 El. c. 15. 3 & 4 W. & M. c. 23. 12 Ann. c. 7.

On any board or sign, or any watch, to the value of 3. 34 Geo. 2. c. 4. sect. 2.

Stealing furniture, &c. from lodgings, if above 2d. value 3 & 4 W. & M. c. 9. sect. 5.

Stealing Exchequer orders, tallies or other orders intitling person to annuity or share in any parliamentary fund, or Exchequer bills, bank notes, South-Sea bonds, East-India bonds, dividend 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 affiling with intent to rob, breaking gaol or effecting, 7 Geo. 2. c. 10. sect. 2.

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

Sacrilege. See Robbery.

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

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

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

Ships. Destroying them wilfully, 22 & 23 Car. 2. c. 11. sect. 12. 1 Hen. 2. c. 9. 4 Geo. 1. c. 17.

11 Geo. 1. c. 20. See Robbery, Week, Stealing. See Black act.

Sluices. See Turnpike.


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

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

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

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

Wandering 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 have them from execution, 39 El. c. 17. sect. 4.

Injuring or causing others to infilt in foreign service, 9 Geo. 2. c. 30.

Accepting commision from the French King.—Continuing in the French service after 29th of September 1757. Contradicting to infilt in foreign service, 29 Geo. 2. c. 17. South-Sea company. Officer or fervant imbeziling their effects, 24 Geo. 2. c. 11. sect. 3. See Forgery.

S. S. bands. See Forgery, Robbery.

Staten. Acknowledging it in the name of another, 21 Jac. 1. c. 26.

Stolen goods. See Helping to steal goods.

Stores. Embeziling them to the value of 20l. or offending against 31 El. cap. 4. concerning embezilment of stores, 23 Geo. 2. c. 5. sect. 3.

Transported. Felons returning within the time, 4 Geo. 1. c. 11. 6 Geo. 1. c. 23. 16 Geo. 2. c. 15. See Refuse, Tress. See Black act.

Turnpikes. Deflovig them, or locks, sluices, or floodgates, or refusing suck offenders, 8 Geo. 2. perpetual by 27 Geo. 2. c. 16.

Warren. See Black act.

Wharf. See Robbery.

Witchcraft. By 1 Jac. 1. c. 12. repealed by 9 Geo. 2. c.

Woods. See Black act.

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

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

Deflovig woollen goods, or rack, or tools, 12 Geo. 1. c. 34. sect. 7. See Clay.

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

After conviction of an offence that was within clerhy, outlawed of it on conviction of any other felony, 3 & 4 W. & M. c. 1.

Wreck.inking holes in ship in dirths, or stealing pump, 12 Ann. b. 2. c. 1. sect. 5.

Plundering shipwrecked goods, or beating, &c. with intent to kill, or otherwise obturing the escape of any perfon from such ship, or putting out false lights with intent to bring any ship into danger, 25 Geo. 2. c. 19. 3 Geo. green, see.

See
See Clwyd. *And for the several species of felon, as Murder, Burglary, Rape, Seduction, and many others, for the respective heads.*

Felony under colour of law. A man came to Smithfield market to sell a horse, and a jockey went to his stall to buy it, but the owner delivered his horse to the jockey to ride up and down the market to try his price, but instead of that, the jockey rode away with the horse: this was adjudged felony. *Kling 52.*

Coming into a house by colour of a writ of execution, and carrying away the goods, is felony. *2 Foss's Cas. 315.*

See below for future references.

**Feme sole merchant.** Where is the feme sole trades by herself in one trade, with which her husband doth not meddle, and buys and sells in that trade, there the feme shall be sued, and the husband named only for conformity; and if judgment be given against him, execution shall be only against the husband. *C. C. 69. 96. Foss 3 Car. 6."

**Feme sole widow.** See that and mingled. *Smitkfield Ball, 5th.*

**Feme sole widow.** See that and mingled. *Smitkfield Ball, 5th.*

**Feme sole widow.** See that and mingled. *Smitkfield Ball, 5th.*

**Feme sole widow.** See that and mingled. *Smitkfield Ball, 5th.*

See below for future references.

In a writ of execution the sheriff returned, that the plaintiff brought his action in the sheriff's court in London against the defendant and his wife as a feme sole merchant, and had a verdict, and by custom in the city of London the Lord Mayor is Chancellor, and may call cause before him out of the sheriff's court, and rule them according to equity; and knows how the Lord Mayor had called this cause before him, and ordered the plaintiff should have judgment, and that the defendant should pay costs within 14 days; and that the sheriff should pay the debt by 50s. quarterly, or else that execution should issue; and that this was the reason why he could not make execution: The court held the return sufficient, and the custom reasonable, tho' it had of late been abused. *Skyn 57. Mich 34. 2. R. Barb. v. Barns.*

Cafe was brought in the Mayow's court upon an indeb. oiff. for 51l. according to the custom of the city. The evidence showed that the defendant in her lifetime had received 31l. 1s. 9d. from her husband, and presently placed it to her own use; the jury found, that defendant had been a freeman, but left off his trade 20 years before, and turned dicing teacher, but the wife lived apart from him within the liberty of the city, and excercised the art of making gin, etc., and the husband no ways intermeddled; that the said woman, without the knowledge of the husband, did carry away the goods, and the husband, at the request of the defendant, sent the goods to her, and the husband deceased, and she took them all, amounting to 57l. and that after her death the defendant promised payment; judgment was given by Rider for the defendant, and he declared, that Trely was of the same opinion. *Mich. 34. 2. R. Barb. v. Barns.*

The Reporter who argued this case, makes a quære, and says it deserves consideration, if such a feme sole trader dies, and leaves an estate, and the husband poxes himself of it, if he shall not be answerable for her debts.

In the husband relinquish, or become bankrupt, or be over 70, or of another trade, or if a widow, it was within the custom. *Skyn 184. in the case of Faban v. Plant.)*

The Reporter who argued this case, makes a quære, and says it deserves consideration, if such a feme sole trader dies, and leaves an estate, and the husband poxes himself of it, if he shall not be answerable for her debts.
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 hand for the other three. Ruled at Guildhall, per His Ch. J. that the husband was liable on the said contract. Paper, 4 Oct. 11, S. 113. Longfort v. Administratrix of Tiler. See L. 10101.

Femella. A woman. Flet. lib. 2. c. 1, p. 17.

Feast, is a hedge, ditch, or other inclosure of land for the better manurcment and improvement of the same. Jews.

If A. be bound to incline against B. and B. 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 trefpas against C. But if A. be bound to incline against B. and B.'s beasts escape into A.'s land, and thence into the land of one D., a stranger, there D. shall have trefpas, and B. shall be put to a curia clandestina according to A. F. N. B. 128. (208) 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 permits them to continue, I may by law punish him through my de-fault. 2 L. 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 trefpas. Per tres. A. against Per tres. B.'s tenant is not to be held to trespass in his own deed; but his remedy is by an action of can on the premises, if without deed, or on covenant, if by deed. Mich. 41. and 42 Eliz. B. R. Ges. 679. Newell v. Smith.

One cannot have trefpas for breaking another man's fence; but if he be damnified by the breaking of it, he may have action on the can of the party that broke it; per Reil. J. Mich. 24 Carr. B. R. St. 131. in case of Sir A. A. Cooper v. S. Febo.

A. sells to B. a piece of pasture lying upon another piece held in possession by A. and B. make a contract to run cattle from running into A's piece. So of dung, B. Per eur. Mich. 3 Ann. B. R. 6 Mod. 314. in case of Tenant v. Colding.

A. was polluted of a close adjoining to a close of B. the fences between the said two cloes; had, time out of mind, been repaired by the tenants and strength of B.'s close. The fence was not repaired, so that B.'s cattle came into A.'s close; A. brought an action on the fence against B. setting forth this matter, and had judgment in C. B. and upon error brought in B. R. this judgment was affirmed; and per cur. the plaintiff has made himself a fixture in the land, by putting up the defendant to bound to this charge by prescription; which prescription is sufficiently alleged; for by tenures is meant the owners of the fee-simple, and by occupators those that come in under them. That tenures is to taken, appears by the writ De curia clandestina, which is a writ of right, and lies only for a tenant in fee, and as this is a charge upon the land, which runs with it, there is good reason, why every occupator should be bound; and it is sufficient for the plaintiff to charge the tenures, and occupators; because it is impossible, that he, who is a stranger, should be able to set up a fence, and set forth the particular effaces, title, and interest, but the prescription is annexed to the tenures, that is to say, tenants of the fee; yet, on a traverse of the prescription, it would be good evidence, that the tenant for years have from time to time fenced, and repaired; for perhaps the effate has not force time of memory before the actual occupation of the owner of the fee. 1 Salk. 335, 336. Mich. 3 Ann. B. R. Star v. Reilly.

For more learning on this subject, see 13 Vin. Abr. tit. Fences. See also tit. Appoindem, Inclosure.

Fractum, (Magna vestita) is a month wherein it is unlawful to hunt in the forest, because in that time the female deer do fawn. It being always fifteen days after Midsummer, according to the custom of the forest, viz. In initio gaudium diesam ante feum Sarac. Johannis Baptistæ, quando Agiastatæ movetur conveniant pro feae. Vol. II. No. 73.
E and because in as part given, and thereto in court; to align dower unto the King's widow, to receive all the rents of the said 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 22 Car. 2. cap. 14. And in some ancient writs that noblemen had their particular fideatories. Humphrey count de Stafford & de Perch, seigneur de Tunbridge & de Caux, afrey foldier in le count de Warrewic, &. Siue that nam, &c. Dat. 17 H. 6. Cowell, ed. 1727. See Kennet's Giff, on the word Fideatory.

Fideatarie. Thes grants, to whom lands in fee or fee were granted from a superior lord, were called generally in Latin, lessin, men, or homagers, and in some other writings were termed vassals, feudal, and fideatories. At the first infliction of beneficen, or fee (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 fideatarie or vassal, then in process of time they became infevate to the heirs male, and by degrees hereditary to the female. Cowell, ed. 1727. See Dr. Bigot's Glossary, pag. 300.

Fideatarie in English, Fidai. "Tis mentioned in Thom. Aus. 1281. Facit ex reditum, reversione, feidatarie, feidatarie, tetam curiam, &c. Fideatarie lat. Fideatarie, A lay-fee, or land held in fee, from a lay-lord by the common services to which military tenure was subject; in opposition to the ecclesiastical holding in frank-almain discharged from those burdens. See Kennet's Glossary.

Fideitarie militiis, or Militaire, 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 ten hides made a knight's fee, which was the common relief paid to the King or other lord was one hundred shillings; yet no doubt the measure was uncertain, and differed with times and places. Cowell, ed. 1727. See Kennet's Glossary.

Fideitarie baroni et nobo, or De fideitarie baroni et nobo, These phrases began in the reign of Hen. 2. to the time of those knights or military tenants, who had been enfeated in any fee or parts of a fee, at or before the death of King Hen. 1. were said tenure fideata de videri fideataris. But those, who had been enfeated in their lands after the death of the King, were said tenures de novo fideataris. Cowell, ed. 1727. See Câtez.

Fidefitum, (Fidefitum,) By the opinion of Sir Thomas Smith de Refup. Anglor. lib. 3. cap. 8. and Wfet, part 1. Symbol, lib. 2. fol. 280. is defended from the Garlick word fideatum, which we interpret fee, and signifie dunsamum feudum: But (as the Cons. Wfet addeth) it signifieth in our Common law any gift or grant of any honours, caless, manors, messuages, lands, or other corporeal and immovable things of like nature, unto another in fee feeble, that is to him and his heirs for ever, by the delivery of seamen, and the possession of the thing given, which cannot be made by deeds or writings: And when it is in writing it is called a deed of fidefitum, and in every fidefitum the giver is called the sever, fidefitator, and he that receive by virtue of the fame, fidefit, fidefitant. And Littletone faith, That the proper difference between a fidefit and a donor is, that the fidefit giveith in fee feeble, and the donor in fee tail. In fee tail it is the ancient and most necessary conveyance, because solemn and publick: and also because it cleareth all diffidents, abatements, intrusions, and other defeizable effects, where the entry of the fidefit is lawful, which neither fine, recovery, nor bargain or sale by deed indented and improved, can be likewise done. See Co. Litt. lib. 1. c. 1. f. 1. Cowell, ed. 1727.

As all property in lands begun by occupancy, so it forms the first method of transferring property was by
and Vent. for the manor, for the woman, for the beneficiary, and for the land.

A. being seized of land in fee Borrowed of B. and for repayment agrees to assent the land; and therefore upon the giving of the land, the fee of the lands comprised in the deed, which had been good and executed the deed, and to give away also; because the bare delivery of the deed or any other thing, in the name of fee, is sufficient, though the delivery be made only to discover to all persons in whom the freehold is vested; and this end is as effectually answered by the delivery of the deed, or any thing else in the name of a fee, as of a turft or a fheef, the one being equally free and visible as the other. 9 Co. 237. 138 a. 12 M. 674. 4a. 675. 4a. 125 4a. 57 4a.

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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 poission and freehold were actually transferred to the lessee, and did not remain in the lessor, after the notoriety made, which gives notice of transferring the freehold. Hob. 314. Cro. Jac. 563. Greenwood v. Tyler. Cro. Jac. 458. 3 Bald. 290. Smith and Bole.

Yet if the notority had made a letter of attorney to give livery, the attorney could not give livery after Michaelmas, because the livery and seisin did not pass to the lessee, and the lessor, in this case, having not pursued his authority, by not giving livery to let the freehold 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 seisin 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 seisin began to operate, which was to govern it, failed to have it well enough executed. Juxta. 13 c. 153. Hovenden and Ped. 876. Cro. 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 effeet for my own use, that which you have given me, to you, and your heirs; there are void feoffments, because the poission is not delivered at the time of the notoriety made; and therefore if such feoffments were allowed, the sehoff 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 absurd to suffer a man to refine a particular effeet to himself, and the heir of the same to be allowed to claim a fee after the livery of any livery of freehold, because no man would be safe in his purchase, if the operation of livery might create an estatte, 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 under this law, because they were under the power of the freeholder, 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 great distances should be valued for value. Cro. Eliz. 451. 2 Vent. 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 future, though there no livery is necessary to pass it; s where A is tenant for life, remainder to B. in fee; A makes a lease for years to C; D, bakes from A. next ensuing, for life; this grant to D was adjudged void, though C. attorned to it after Michaelmas, because such future grants create an uncertainty of the freehold, and the tenant of the freehold being the person who is answerable for the grantees praecept, and to do good for the same, it was unreasonable to permit him, by any act of his own, to prevent or delay the prosecution of their right. Cro. Eliz. 451. 2 Vent. 204. Co. Lit. 217. 5 Co. 94. b. 2 Co. 55. Buckler's cafe. 2 Aud. 20. Mor. 473. Cro. Eliz. 456. 585. Hob. 170. 171. 5 Co. 94. b.

But if a lease be by any act of the lessee, to be void, and so on.

If a lease for years be made to A, the remainder to the right heirs of B, and livery and seisin is made to A, yet the freehold does not pass from the lesse; and therefore the livery is void, because there was no poission in being at the time of the livery made, in whom the freehold could vest, for there is nothing in the lease to show that the deed was not a general in perpetuity, which would create an uncertainty of the freehold, because it would create an uncertainty of the freehold, which would necessarily perplex and delay all prosecutions against the freehold. Co. Lit. 217. a.

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so that no man can pretend ignorance against whom to bring his præcis, which would be the mischief in the former cafe, if the freehold did not pass at the time of the livery made. Lit. lect. 350. Co. Lit. 217.

If a lease for years be made to A. and B. the remainder to C. in fee, and by a residuary devise to D. the whole poffeffion being by entry, or receive the poffeffion from the leffe by the fo-lennity of the livery; and therefore when the whole poffeffion is delivered by the leffe, and livery made to A. in the abfence of B. in the name of both, this livery is foient to the remainder in C. because A. had as much poer to receive the poffeffion of the whole, as if the leffe for years had been made to him only, he and B. being jointees by the demise, and thereby failed per my & per tuit. Co. Lit. 49. 5 Co. 94. 2 Rol. Abr. 8.

A lease for life for life had been made to C. to commence immediately, and C. had appointed A. and B. his attornies to take livery from the leffe; the livery made to one of them alone had been ineffectual and void, becaufe one only, without the other, had no authority from the delegation to receive the poffeffion, and consequently the poer of the privy fafety from the principal, is a nullity, and void; but otherwise it is, if the letter of attorney had been jointly and severally to receive livery. Co. Lit. 49. b. 5 Co. 94 b. Palm. 23.

A. is fee'd of livery when the leffe is out of poffeffion, it is regularly true, that the leffeor muft be actually in the poffeffion of the land, at the time of the livery made, or otherwise the livery will be ineffectual and void: becaufe the defign of the livery is to give notice of the change made of the poffeffion, and therefore it is not to be fuppoft, that the privy fafety from the poffeffion of the leffeor had abated, that a man fhould be permitted to transfer to another what he has not in himfelf: wherefore if a man makes a leffe for years, or life, of his land, or has his land extended by virtue of a fervice merchant, &c. and make a feoffment and livery, the confafue or leffe being in poffeffion of the land, the livery is void, becaufe the land is filled by the leffe; and consequently, during the continance of his intereft, the leffeor can't deliver a vacant poffeffion; and therefore the livery, which is a fo-lennity intended to give notice of the change of the poffeffion, muft be void. Co. Lit. 48. b. 2 Rol. Abr. 34. 4 Rol. Abr. 34. Dyer 18. b.

Thus if there be leffe for years of a house and fervice clofes, and the leffe and all his fervice being in the house, the leffe enters into one of the clofes, and makes a fervice of it, and gives livery, this is a void feoffment; becaufe the poffeffion of part of the thing demifed is the poffeffion of the whole, for the impoffibility, that a man fhould be in the actual poffeffion of every part of the land at the fame time; and consequently the leffeor can't take poffeffion of the clofe, which was filled by his leffe; and therefore the livery must be void, becaufe the feoffor had no poffeffion in the clofe when the livery was made. 2 Co. 31. b. Barlow's cafe. Mail. 397. 2 Rol. Abr. 4. Co. Lit. 48. Dyer 18. b.

So it is if the leffe for years himfelf had not been in the house, or any part of the land, yet if his wife, children or fervice had been on any part of the land, that part of the poffeffion was filled by the leffeor; and upon the land, without either wife or fervice on the land, does not fill the poffeffion as to prevent the leffe from entering and making a good livery to pafs the freehold, becaufe the calf can't be laid to continue upon the land unless poffeffion, for the benefit of their mafi, as a fervice man, and by duty ought to do. Co. Lit. 48. Dyer 18. b. 2 Rol. Abr. 4. Dyer 18. Br. tit. Feoffment 66, but Mar. 11. cont.

If a man makes a leffe for life of lands, and afterwards makes a feoffment of the fame lands, and makes livery and leffe upon the land, by the affent of the leffe, and in his prefence, this is a good livery to pafs the inheritance, becaufe the leffeor's permitting the feeoffor to come upon the land, and make livery, is a fufficient quitting of the poffeffion to him, either by way of fur-render, or to create an annuity to him at the same time, to make the feeoffment and livery more effe£tual and valid. 2 Rol. Abr. 5. Shepherd and Greg. Bre. tit. Sur-rend. 48.

But if the fervant of the leffe were only on the land, the livery of the leffe from the fervice, though with the fervant's permiffion, had been void, when the servorum continued in poffeffion at the time of the livery made; for while the fervant continued in poffeffion, it muft be only for the life and benefit of him that placed him there; and consequently the poffeffion of the fervant muft be looked upon as the poffeffion of the mafi; and therefore the livery muft be void, becaufe it could not deliver a poffeffion which was still filled by the mafi, and which the mafi never confented to part with; and the permiffion of the fervant will not admit of fuch a conftruotion as was made in the precedent cafe, becaufe the fervant having no intereft in the lands fettled as a reward in the effe£t of the leffe, and finding nobody in the house but the fervant of the leffe, who quitted the poffeffion of the house at the defire of the attorney, and then the attorney made livery, which the mafi approved of at his return, faving his term, that this was a good livery; becaufe here the fervant actually quitted the house, and thereby the attorney had a vacant poffeffion to deliver to the feeoffor; fo if the attorney found the leffeor himfelf upon the land, and had entred and oufled him, and then made livery, that had been good to pafs the freehold; for though the lands had been held by the leffeor, this feeoffment became thereby vacant, and consequently by the livery might be delivered to the feeoffor. Dyer 303. a. 2 Rol. Abr. 5. Mar. 91.

A. fee'd of land in fee, hold of the Queen in fcoage, died, and it was found by office, that he did without heir, by which the lands were fee'd as the efcheat 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 feeoffment, with a letter of attorney; and afterwards the issue being for B. judgment was given that the lands left the R. feint amours, and then the attorney made livery, after the manner of one of his ancestors; this was held a good feeoffment and livery; becaufe, by the judgment against the Queen, her poffeffion was defeated, and B. was restored to his right of poffeffion, which he might have placed himfelf in at his pleasure; and therefore the transfer that to another which he might actually inveff himfelf in at pleasure. 2 Rol. Abr. 5. 6. Terry v. Brown.

Thus if land defends to J. S. who enters but into part of it, and makes a feoffment of the whole, and livery in that part, in which he entered in the name of the whole, and the lands faild pass for benefits that in this cafe, an entry into part may be conftruited into an entry into the whole, the feeoffor having a power to take the whole into his actual poffeffion at his will, the very act of feeoffment, with the livery, in all these cafes, may reafonably be taken to be a determination of his will to take the whole. This cafe is argu'd improperly. 2 Rol. Abr. 5.

If there be A. leffe for years of fix acres, and he makes a leffe for years of three acres to J. S. and he in reversion enters upon J. S. and makes a feoffment with livery, this shall pafs the three acres, becaufe by the defiue of A., for years, the poffeffion became feparate and divided, which was united and one under the leffe to A. himfelf; and therefore A.'s continuing in poffeffion of his own three acres could never be in poffeffion of the other three, which he had no right to during the demi
to 7 S. but if A. had only made a lease at will to 7 S. of those three acres, the entry and livery of the reversioner had not pulled them, because it would have derogated to the present possession of B. 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 reasonably considered to be the possession of the whole. 2 Co. Litt. 31. 495. 1 Dyer 18.

So it is in the case of a tenant at f.FORMANCE; as if tenant in tail makes a feoffment in fee to the use of himself 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 lessee for years is determined and engrossed into a tenancy at f.FORMANCE, because the fee-simple, out of which it was derived, is vended by the remitter; and the issue enters into part of the land defended, 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 f.FORMANCE 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. 3 Roll. Abr. 5. 4 Roll. Abr. 17. 5 Will. and Che. 1145.

If A. be feoffor for life of Black Acres, and being likewise feoffor in fee of White Acres, makes a feoffment of both, and gives livery in White Acres, in the name of both, this is a good seoffment of both Acres, because A. had the issue of and possession of both Acres, and therefore might well deliver them over by the seoffment; otherwise if A. had been only seoffed of Black Acres for years, for then it should not pass by the seoffment, because the charter of seoffment passes the interest in the term before the livery made, and a kettell ciate by right shall be supplanted to pass, rather than a greater by wrong; but in the birth of Acres A. had the freehold in both Acres, nothing passing till the livery was made; and therefore the livery must operate to pass the fee in both Acres, feoffment for a man's charter, or else it can pass nothing. 2 Roll. Abr. 6. 9 H. 7. 25. 6.

But if A. had been seoffed of Black, Ace, for years, in another estate, as guardian to an infant, and had made a seoffment of both Acres, and given livery in White Acres, in the name of both, that had passed both Acres to the seoffor; 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 livery must be made to the infant, and the seoffor must give him in reversion, 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 seoffment and livery to A. of the land in lease, this is a good livery and seoffment; for the land was in lease to A. yet his acceptance of the seoffment and livery amounts to a surrend tor, ut res magis valent, and consequently the seoffor has thereby seoffment to transfer by the livery to the seoffee. 2 Roll. Abr. 495. Dyer 358. Mer. 635.

If husband and wife be seoffor in fee of land in the husband's name, and the husband makes a seoffment of the whole, the wife being upon the land, yet the livery shall pass to the husband, because the husband had the whole possession, either in his own right, or in right of his wife; and therefore could deliver it over by the seoffment, the wife disaffaging to it. 2 Roll. Abr. 203. 4 Perk. 229.

If the Queen be lesee for years, and be in reversion enters upon the land, and makes a seffion in fee, this is void; because the law prescribes the seffion for the Queen, who by constantly attending the b.urlinaes of the publick, is presumed not to have leisure to take care of her lands, and if the Queen had made a lease for years to J. S. and he in reversion had entered and ouzled him, and made a seffion, that had been good; because the Queen had no right to the seffion during the lease to J. S. and the reversioner having gained the seffion by his ouzling to J. S. might consequently deliver it by the seffion. 2 Roll. Abr 5. and see 2 Co. 53.

If a man be seoffed of two acres, and being seffor of one, makes a seffion of both Acres, the entry and livery of the seffor in the acre in possession, in the name of both, yet the seffor which he was seffor does not pass, because he could not deliver that possession to the seoffee, which the seffor had. So it is, if the seffor had made a lease at will, and then the seffor had made a seffion of the acre in his possession, in the name of both, this had not pulled both Acres, because the seffion of one acre was null out of him, and the seffor could not be any determination of the will of the seffor. 2 Roll. Abr. 6. Dyer 18.

But if a man be seoffed of two acres, and makes a lease at will of one, and after enters j. S. of both Acres, this shall pass all the Acres; for the very seffion and livery is a determination of the estate at will, and consequently the seffor has thereby restored the seffion in order to convey it by livery; otherwise of a lease for years, because the possession is in the term during the lease. Dyer 18. 2 Roll. Abr. 5.

If a man be seoffed of two acres, and makes a lease for years of one of them, and after makes a seffion of both Acres, and livery of the acre in his own possession, in the name of both, the livery is void and ineffectual to pass to a seffee in fee, because that being full of the livery, the seffor had not the seffion to transfer by the livery; yet such seffion is a good grant of the seffion of the one landhold and livery of the other. And consequently if every man's act is construed most strongly against himself, and therefore the seffor shall not be admitted to claim any thing in either of the Acres, since the seffion of the one was actually transferred by the livery, and the reversion of the other in lease by the deed of seffion, which, with the possession of the tenant, amounts to a grant. Co. Lit. 49. a. 2 Roll. Abr. 56. Pitho. 162.

But if there be a lease for years, remainder to B. for life, and C. the seffor in fee makes a seffion in fee, with livery to A. this is void as a seffion, because C. had no seffion 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 surrender, nor an attornment; as in the former case it could not amount to a surrender, because of the intermediate freehold which was in B. nor did the seffion amount to a grant and attornment; for tho' according to the former case, every man's conveyance is confined to what he has conveyance of, the grantor attending the operation of the freehold is a grant, and the grant is ineffectual, for want of attornment; as A.'s acceptance is no attornment, because he shall not bring B. within his fealty, by any act which was not in its original intention designed to be prejudicial and injurious to B. by diluting his remainder. 2 Roll. Abr. 4. 56. 1 Roll. Abr. 223. 2 Roll. Abr. 495. 3 Roll. Abr. 495. 4 Roll. Abr. 495. 5 Roll. Abr. 223. 6 Roll. Abr. 495.

It seems, that anciently the seffion and giving livery was performed before the paros of the manor, where the lands lay; but this being found too much to frighten the transferring the seffion, it was found necessary to admit the testimony of strangers, and this came afterwards to be established for the convenience of it; and because all men of the county assembled 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 paros of the county were thereby ultimately to determine all things relating to the particular manors, it seemed the more reasonable to admit the paros comitatus to attest the seffion as any particular manor, and infenclly the whole county; and from hence it came to be admitted, and by the law continues, that if a man failed of lands, in several villages in one county, and has a seffion of one of those, because of a feoffment of a certain piece of parcel of the lands in one town, in the name of all the lands in that town and in other towns, that all the lands of the so, the lying in that county fail pass, as well as if there had been livery given in each town. Co. Lit. 253. a. 2 Roll. Abr. 11.
equal to that which transferred it from him.

But if an infant makes a feoffment, and a letter of attorney to make livery, that is void; so if a person non compus makes a surrendor or release, this is void in law;

But if an infant makes a feoffment, and a letter of attorney to make livery, that is void; so if a person non compus makes a surrendor or release, this is void in law; so if he makes a letter of attorney to give livery, but it be void on the death of the person of non-compus, or idiot, may avoid his feoffment; and so may the King upon an officer found of his lunacy during his life.

2. 40. 11. 2. Roll. Abr. 2. 8. Co. 42. 43. Whittingham's case.

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 dependance 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 the other county, parts of one of which were reasonably presumed to be ignorant of what was transferred in the other; and therefore the in

The infant's feoffment is voidable by the infant's assent, when he has the means 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 makes to be of a fence covert; for if he makes a feoffment upon the land, 'tis voidable by her husband; but if he makes a letter of attorney to give livery, 'tis absolutely void in law; and the reason is, because the contrail of those that are disabled by law to contract were void contrails; but their in

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F E O

For if the letter of attorney be to make livery upon condition, as to make a feoffment conditional, and the attorney delivers in absolute, the livery is not good, because the authority is not to create an absolute fee-simple; 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 diffider. 11 H. 4.

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 feoff-
ment good; because when the attorney had once de-
livered 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
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 nul-
licity, and void. Perk. fett. 152.

But if the attorney does purport to deliver seisin to two,
and he had made livery only to one, that had been void;
because he had no authority to deliver the whole pos-
session to one exclusive of the other, and therefore it's void
for the whole. Perk. fett. 188.

An attorney can't make a livery within view, because
such a livery is in many 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 li-
viey in view, because the possession is not in the seisin
until actual entry made by him, and consequently the
attorney has not executed his authority. Co. Lit. 53. a.
2 Roll. Abr. 8; for,

If a letter of attorney be given to two jointly to take
livery, and the seffor makes livery to one in the ab-
ence of the other, in the name of both, this is void;
because they being appointed jointly to receive livery
are considered as one. 12 Roll. Abr. 8. 49.

But if a seffor be made to A. and B. and the
seffor 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; though the entire pos-
session be delivered to one only, yet they being joint-
tenants by the deed of seffion, such livery to one
makes no alteration or change in the possession, because,
if the livery had been made to both, each had been
placed in the possession; besides that, every man being
premised to accept a gift for his advantage, A. is locked
upon as the attorney of B. to receive the possession fr
him, and therefore the livery to A. confers on the benefit
of B. till he discharges it. Co. Lit. 49. 2 Roll.
Abr. 8.

But if a letter of attorney be made to three conjuncti
& divisiun, and two only make livery, this is not good,
because not pursuant to their authority, for the delega-
tion was to 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 actu-
ally, since he did not dissent to it. Dyer 62. 1 Roll.
Abr. 326.

If a letter of attorney be given to A. to make livery
to lands already in fealty, the attorney may enter upon:
the seisin in order to make livery; because the letter of
attorney, the seffion, the power cannot deliver 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 seisin; but by Rolle, it is
the fater way to effect a cluse in the letter of attor-
ney, for the attorney to enter to 'seisin alias inde spe-
340. a. 2 Roll. Abr. 9.

If A. be divested 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, sefundum formam chartae, this is not good,
because the attorney has not purveyed his authority; for
the efficacy of the diffider can't be defeated without an en-
try into the whole, and therefore the efficacy of the
attorney can't execute his power in the manner it was de-
ligated; and therefore what he did in this case was void.
Co. Lit. 52. a. 2 Roll. Abr. 9.

If A. makes a lease for years to B. and after makes
a deed of seffion with a letter of attorney to B. to de-
liver seisin, and B. makes livery accordingly, this shall
not extinguish or affect his term, because the livery
was made to pass the freehold, and that he did as represen-
tative to the seffor; and therefore since the seffor can
claim nothing from the seffor, the interest of the seffor
remains it was, unaffected by the seffion. Co. Lit.
52.

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

There are few or none excluded from exercising this
power of delivering seisin, for monks, infants, and
other covenants, persons attainted, or excommunicated,
villains, aliens, &c. may be attorneys for this;
for being only a naked authority, the execution of it can
be attended with no manner of prejudice to the per-
sons under those incapacities or disabilities, or to any
other person, who by law may claim any interest of fuch
disabled persons after their death. Co. Lit. 52.
Perk. fett. 187.

A mere coven 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. 53. a.
Perk. fett. 196.

The power of the attorney must be executed during
the life of the person that gives it, because the power 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 to B. to hold for life, this letter of attor-
ney, 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 Roll. 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
since a man may take an estate in remainder, though he
is not party to the deed, a forteri one not party to the
deed must take all authority or power by it. 2
Roll. Abr. 8. 9. and wide Co. Lit. 52.

But if any corporation aggregare, as a mayor or com-
monalty, or dean and chapter, make a seffionment and
letter of attorney to deliver seisin, this authority does
not determine by the death of the mayor or dean;
but the attorney is to execute the power after their death,
because the letter of attorney is an authority from the
body aggregare, 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 remov-
ed, livery after terms not good. 4 H. 8. 3. 11 "t. 19.
Co. Lit. 52. b. 2 Roll. Abr. 12.

For more learning on this subject, see 12 Vin. Abr, and
2 Bis. Abr. tit. Feoffment.
Form of a deed of feoffment, with a letter of attorney to deliver feinit.

This 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 

$500, to be paid at the rate of 

$100 per annum, to have and hold the said C. D. to him in hand paid by the said C. D. at and before the failing and delivery of these presents, the receipt whereof be the said A. B. due barely acknowledged, and thereof due acquit and disbarge the said C. D. his heirs and assigns for ever, by these presents, hath granted, bargained, sold, and parted, assigned, transferred, conveyed, and delivered, and by these presents do and shall grant, bargain and sell, alien, assign, release and confirm, unto 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 remainder, reversion and remainder, rents and services thereof, and all the offices, rights, titles, interests, claims and demand whatsoever, of the said A. B., of, in and 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 behoof of him the said C. D. and his assigns for ever, under the yearly rent of 

$100. And the said A. B. for himself his heirs and assigns, do covenant and grant to and with 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 present, use and enjoy the same, and all and every part thereof, and further, be the said A. B. and his heirs, and all and every other person and persons, and his and her heirs, any thing having or claiming in the said premises above-mentioned, or any part thereof, by, from or under him, the said A. B. shall and will at all times hereafter, at the request and costs of the said C. D. his heirs and assigns, make, do and execute, for cause and precure to be made, &c., all and every such further and other lawful and reasonable grants, attains and assurances in the law whatsoever, for the better, better and more perfect granting and conveying, and assigning of the said premises; with all and every the appurtenances, unto the said C. D. his heirs and assigns, to the only proper use and behoof of him 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 his or their counsel learned in the law, shall be reasonably devised or advised and required, and to the general use and benefit of the said premises and appurtenances, and held to him the said C. D. his heirs and assigns for ever, according to the true intent and meaning of these presents; raising, confirming and allowing all and whatsoever, by any act, deed or instrument or the said C. D. his heirs or assigns, or of them severally, shall do in the premises. In witness, &c.

Fecit et Jus Fecit, Fecit, Is he that infects, or makes a feinitment to another of lands or tenements, in fee-simple. And jussi is he that is infected, or to whom the feoffment is made. Cowell, edit. 1777.

Fromm, Mr. Justice Saxby's son, held the oaths of the lord or charter, as customary tenants, rended unto him a certain portion of visulae and thongs
Feuering (Feueringus). The fourth part of a penny quadrant. Quaundis quartum feminam venditur pro 12 denariis, tum parce coquendae de ferme 30 denariis, 4 feueringus aquae regis Anglatam, 5 hodie sedam militatur. Es. 12 Ed. 2. n. 18. Ebor. In ancient records is used both Feueringus & Feuringus terre. See Mus. Angl. 2 par. fol. 8. My Lord Coke tells us, that Feuringus terre is the fame as a quadrantine of land, and that it contains thirty-two acres. But a quadrantine is no more than a perch perch, which is but one acre. Cowell, edit. 1727. De Feuering.

Fern, or Farm. (Ferma, from the French ferme, pradum.) Signifieth with us, hoare or land, or both, taken by indenture or lease, or lease parcel. This in the North part is called a Yarde, in Lancashire a Farm-holt, in Essex a Hille. We may conjecture, that both the French and English word came from the Latin firmus; for we find beare ad firmam to signify with others as much as to feet or to farm with us; the reason whereof may be in respect of the fore hold they have been of tenants of the land. In Scotland, Stritnacra, is the same.

In the Terms of the Law it is derived from the Saxon seorinn, which signifieth to feed or yield virtual; for in ancient time the refervations were as well in virtuals as money; how many ways farm is taken, see Psal. 195. Witschey's cafe. See Feron. Cowell, edit. 1727.


Ferniroll. See Wyke.

Feronioun. (from the Saxon firmus, i.e. for'd, or feeding.) The winter faison of deer as tempus pinguissimum is the summer faison. See Dillest Dic. Collet fultonis manerii de Brokeley sathum. Cum mittente di-fermentum valletum nostrum Johannem de Fulham ad inflectam fermentonam in parcijs nofriis idem, prout vulneret sibi melius ad opus nostrum feritatis factum, copilredit. Vide manuolum. &c. Cl. 30 Ed. 1. n. 10. Cowell, edit. 1727. &c. Tempus pinguissimum.


Ferramentum. (Ferramenta.) The iron tools or instruments of a mill. Reparare ferramenta ad tres carna- tis, that is, the iron work of three ploughs. Lib. operis


Ferrure, The shoeing of hores. See Wounde of toure.

Ferry, Is a liberty by prescription, or the King's grant, to have a boat or paffage upon a river, for car- riage of horses and men for reasonable toll: it is usuably to cross 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, unlefs he allege some particular damage, &c. 3 Hid. 394.

A ferry is in respect of the landing-place, and not of the water, the boat may be one, and the ferry to the 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, the land on both sides the water, ought to belong to the owner of the ferry, or otherwise he cannot land on the other part. 13 April 23 Eliza. in Sac. Savil. 11. Inhabitants of Ishwich v. Brem. And every ferry ought to have expert and able ferrymen, and to have perfect 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 inconvenience, and especially when there are differences of two counties, any felony may be conveyed from one county to another, secretly, without any notice. Sav. 14.

A ferryman, if it be on fall water, ought to be privi- leged from being prest as a fisherman, or otherwixise. Savil 11. &c.

Owner of a ferry cannot apprize that, and put up a bridge in its place without license, and ad quod damnum; per Holt Ch. J. Pach. 3 Hil. & Mor. Show 214, 257. Pain v. Purtridge. Cart. 193. 8. G. 1 Salk. 12. G.

If a ferry be granted at this day, he that accepts such grant, but tolls less for a boat, is to be sued, per Holt Ch. J. Show. 257. in the cause of Pain v. Pur- ridge.

Custom for the inhabitants to be discharged of toll, may have a reasonable beginning by agreement, as that the inhabitants of the town might be at the charge of procuring the grant, and in consideration thereof, one man to find the boat, and take toll; and the inhabitants to pay none; per Holt Ch. J. Show. 257. at fop.

A common ferry was for all passengers paying toll, but the inhabitants of A. were toll-free. An inhabitant of A. may make such action for take toll, but not for keeping up the ferry; because the former is a private right, but the latter a public right. Salk. 12. Trin. 3 H. 4. Pain v. Purtridge. But he can't maintain an action for not polluting; for so, another subject might bring an action, which would be endless; but the taking toll was a frequent, and without special damage he can only indeed, or bring information. ibid.

Ferrier, A fare or fore-fact; the customary pay- ment for a paffage over a river, or crossing a ferry in a ferry-boat with carrying-men, or men, or passengers.

Ferreken. To fax suddenly. Nemo paleti de fede domini ju quae paciter non esse, nec ego delet recidere ejus ter- freken. (i.e. to fax suddenly, ferreken, (i.e. to give a hasty account,) de omnibus causis vel rem publicis vel inamnicientibus impeditosc aliquid, ut prius delet habere terminium requirendo et habendi de minis fum. Leg. H. I. c. 61.


Fefktingmen, Ut illot monstrofrium fit liberrimum ab illis incommodiis, quae nos Saueores lingue fefktingmen dicimus. Mon. Angil. 114 par. fol. 252. a.

The Saxon syftemum signifieth fidujus, a pledge, so that to be free of fefktingmen, is to be free of all subdebt, and not to be bound for any man's forthcoming, who should transfer the law. Cowell, edit. 1727.

Fefkting-penny, Earnest given to servants when hired or retained, is so called in some northern parts of England, and in others it is termed order-penny, after the Saxon syftemus, to fallen or conform. Cowell, edit. 1727.

Feflum, Properly signifieth a feft, but it is usually taken for a general court, which was formerly kept on the great festivities in the year. Thus we read in our historians, that in such a year the King kept his Christmas at Winchester, &c. 50, and in every year, he kept on a day or two after Christmas, in the said time, viz. Rex apud Winton maximum feflum & centum- simae celebravit, tempore natalis Domini, commacius ibidem principis & baronibus suis regni. Cowell, edit. 1727.

Feflum & Michaelis, It is that day in which the Christians fought against the Infidels, and obtained a victory by the help of St. Michael, now called St. Michael's day. Cowell, edit. 1727.

Feflum Nuttlatificus E. Parici. Was thus instituted, viz. A melancholy man, who led an holy life, did every year hear the melodious harmony of angels in heaven: At which being wonderfully surpriz'd, and being one day very earnest in prayer, an angel told him that on the day of the Nativity or Christmas, as it was born, he was born there am on the day of her birth was not known on earth, therefore it was celebrated by the angels: this being told to the church, that
that day was afterwards set apart to commemorate her birth. Cowell, edit. 1727. 

Hun. Anglifd. lib. 3, cap. 16.

Ficush Antiquum, The feat of fools. See Caput and.


Feudal baronies. Feudal baronies were, when the King, in the creation of baronies, gave Any one of them for the defence of the realm. Per Holt C. J. There is no feudal barony remaining at this time, except


Feudal barons, where a tenant held a certain territory of land, per

baroniam, wherein there was a cafe, whereby all the inhabitants of it were his tenants; and those who held the

Capita baronii; and there was no slower of them, because they were for defence. No such have been

granted since Richard II.'s time. Mich. 7 W. 3. B. R. 

12 Mol. 54. Lord Gerard's cafe.

Feudary, See Fredary.

Feudatory 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 kinship's quarrel; according to that of Tacitus,

De moribus Germanorum, foulfere tam inimicitias fei pu fn, fei procipii, quam amicitias mutuo elt. Cowell, edit. 1727.

Feuds, (Feda.) Estates in lands were originally at will, and then they were called Muncas; afterwards for life, and then they were termed Beneficia, and for that reason the livings of clergymen are to called at this day; and afterwards they were called Feods, 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 thenceforward hold them to themselves in their own, and be exalted above the rest of the kingdom; for till then reigns fees or fees were not hereditary, but only for life, or for some determinate time.

3 Salt. 165.

Feuggerium, and Fuggerium, Fern, (from the Fr. fuggerie, i. e. fern.) Et de omnino afflictionem brutvrt, queritur, turbatur, jucule, & fugierit ad domum suas co-


Fugger, See Fuel.

Flint is a short order or warrant of some judge for making out and allowing certain processes, &c. if a certiorari be taken out in vacation, and ifed of the pre-

cedent term, the flat for it must be fined by a judge of the court, some time before the eftion-day of the subfe-

quent term, or else it will be irrelle: But if it is said there is no need for any judge to find the writ of certior-

arri itself; but only where it is required by flatute.

1 Salt. 150. 2 Hawk. 289.

Flat jufitia. On a petition to the King, for his warrant to being a wri of error in parliament, he writes on the top of the petition Flat jufititia, and that the writ of error is made out, &c. and when the King is petitioned to redress a wrong, he indorses upon the peti-

tion, Let right be done to the party. Stannf. Pravng.

Reg. 21.

Flkale, Fifdale, and Fildhale. Bract. lib. 3, f. 117. A composition or entertainment made for gain by batten, to those of their hundreds, or rather according to Ca.

4 Lrt. fol. 307. an extortion, color composition. See Estate.

Folatia of law, (Fictia juris,) Is allowed of in several cases: it must be framed according to the rules of law, not what is imagined 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 assum-

ption of law upon an untruth, in something possible to be done, but not done. See Gilbolph and Dariel. The fiction of the confuee in a fine, is but a fiction in our law; it

being an invented form of conveyance only. 1 Litt. Abr. 610. And a common recovery is fictio juris, a formal act or device by course, where a man is deffive to cut off an the wrong, and redresses, &c. 11 Rep. 42. By fiction of law, a bond made beyond its time may be pleded to be made in the place where abroad, in fictitious in the county of Middlesex, &c. to try the time here, without which it cannot be done. 1 Litt. 281. A.

There are five forms of fictions in law, abatement, remit-

tions, relations, presumption, and representation; per

Dodderidge J. 7s. 73.

Fiction is never admitted where truth may work; as when eft Rogers ufe, and his teoffee join in a feuement, it shall be the feument of the teoffee. 

Hil. 15 Jan. 

Hil. 8 Feb. 1731. In the case of W. v. Gerard.

The law never shall make any fiction but for necefiety; and to avoid a miichief; per 


Hil. 73. 5. C. and to avoid abufibility, and preferve the right of a stranger; per Dodderidge J. Pojib. 1 Car. in 

Cam, Sec. The law often makes fiction for pre-

vention of rights; per Goth. J. 12 Med. 290.

In fictio juris sinister adficit apud 

1 Rep. 51. 

Lifford's cafe. — It must do prejudice to none; per 


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

It shall not make a man subject to the penalty of a feuement, a fiction of law. Arg. Goth. 588. cites 1 Rep. 51.

No escape can amount to a capital offence, unless the crime, for which the party was committed, were actually fait with 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 a man is committed for having given a dangerous wound, and escape, after which the party died. 2 Hawk. Pl. C. 135. f. 25.

All fictions of law are to certain refpects and purposes, and extend only to certain perufals; as the law suppoftes the vouchee to be tenant of the land, where in real vertute he is not; but this is as to the dammand himself, and to enable him to do things as to the demandant, and which the dammand may do to him; and therefore a fine levied by vouchee to the demandant, or fine or re-

fide from the demandant to the vouchee is good; but the fine levied by the demandant to be ftranger, or half made to him by a stranger, is void; per Cale. Mich. 33. 48. Eliz. B. R. 3 Rep. 29. b. in Butler and Baker's cafe.

The King is not to be answered, bound, nor defeated by fictions; and therefore he would have been bound in his servitude, or remandery by a feigned recompence upon a common recovery, or warranty collateral, without true and actual aff'ets; &c. Hdb. 339. in the case of Sheffield and Radcliffe, cites 6 Ed. 5. 56. and 1 Rep. 43. Aitem-

wood's cafe.

These things are properly fictions of law, that have no real effec on their own body, but are acknowledged and accepted in and for some special purposes. Hdb. 222. cites Ca. Lit. 265. b.


flet, Which we call for, is in other countries the contraries to chattels. In Germany certain diribits are called flet.

ficti factae, Is a writ judicial, that lies at all times within the year and day, for him who hath recov-

ered in an action of debt or damages, to the sheriff, to command him to levy the debt or the damages of the goods against whom the recovery was had. This writ had
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 executor or administrator; for by the execution awarded the goods are bound, and the sheriff need not take notice of his death. 

Cra. Efis. 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 time of the writ; but by this statute they are bound from the time of delivery of the writ to the sheriff; but even since the statute, the execution seems good in this case, for the statute was made for the benefit of strangers, who might have a title to the goods between the time 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 Salt. 322.

So if the plaintiff dies, the execution does not abate, and the sheriff may, notwithstanding, proceed in it, because the sheriff having made the execution in the plaintiff's name, for 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 entire thing, and cannot be superseded after it is begun. 1 Salt. 322. per cur.

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


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

Per Pimpan, and agreed. 


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 tells them all, it is clear that the defendant shall have action of trespass against the sheriff; 

per Gaway, which was agreed. No. 59. in case of Hedge 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 chest, and take the goods in it in execution, and if he does not, an action of false lis lies against him. 

Brend. 59. 

Trin. 44 Efis. 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 bona et tali cas, &c. taken from the words the writ takes its denomination. 

Ct. Lit. 290. b.

The property till sale remains in defendant. 

Brend. 41. 

Trin. 6 Fac. Annu.

The property of goods is vested by the delivery of the fieri facias, and in an extent afterwards for the time comes too late, and that on the statute of frauds and perjuries; 


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-charge, 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 perfon. 

Rev'd in the court of wards by the two Julians. 

Ch. B. M. 312. 52. 73. 3 Rec. Mary York's Cafe.

Debt against the sheriff lies for money levied on a fieri facias, before the return of the writ, shall he may take advantage of his own delinquency; 2 S. & M. 79. per cur. 

Trin. 31 Car. 2. B. R. J. & Gavram v. Ridley.

Payment to the sheriff on a fieri facias, is a good plea, but not to the garnishee. 2 Lec. 265. Trin. 29 Car. 2. B. R. Taylor v. Beaton.

If the sheriff on a fieri facias, do sell a lease or term of a house, so that the buyer must not put the possessio into the period of the lease, and the vendee in, but the vendee must bring his ejectment; per cur. 2 Show. 85, per cur. 

Hill. 32 Car. 2. B. R. The King v. Deon and Bird, &c. C. A.

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. 87, per cur. Hill. 32 Car. 2. B. R. The King v. Bird, &c.

Goods of the wife vested in trusses on the marriage, but the husband to have the use of them for life, were fined on an execution for the debt of the husband, and the assign ment adjudged fraudulent as to the creditors at law, and on a con vote, 56 Eliz. 212. 

Al. 1601. Underv. v. Underwood.

Upon a fieri facias, the sheriff may take any thing but wearing clothes; if the party has two gowns he may have one of them. Per Hill Ch. J. Cumb. 359. Eliz. 8 W. 3. 4. R. 

Sai. 283. v. Eve, &c.

Two of the facias's were delivered the same day, 

Holt Ch. J. inclined that the sheriff had election to prefer either, but ordered it to be made a case. 

See quere now the late statute. 

Cumb. 428. Trin. 9 W. 3. B. R. 

Shaddon v. Sheriff of London. S. C. Cumb. 422. but no references to S. P. Execution upon a fieri facias is left in, first is good, but the sheriff in the first may have action against the sheriff, unless he bid the sheriff fly execution, or to that purpose. 

1 Salt. 320. Shaddon v. 

Buckingham. In Salt. is a N. B. that he who brought the first writ told the sheriff that he was not in hale, and so took out warrant, nor left any fees; and this inclined the opinion of the court more strongly against him. 

Cumb. 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 Holt Ch. J. the ven 

appeal 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 purchases of sheriffs, and that might make writs of execution of no effect. 

5 Med. 376. S. C. 

Ch. J. took notice that the party laid to the sheriff, " You may let it lie, it requires no haste," 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, which had been delivered a fortnight after, yet if it be the first has action in the sheriff, shall be good, and the party's remedy is only against the sheriff. 12 Med. 146. S. C. held accordingly. 

Lord Sum. Rep. 251. S. C. refolved, 


See Cumbria, Stute lying.

Fictitiously, Dicta quinque, is a tribute or imposition of money laid upon a city, borough, or other town, through the realm; not by the plea, or upon this or that man, but in general upon the whole city or town, and so called, because it amounted to a fifteenth part of that which the city or town hath been valued at of old; or to a fifteenth part of every man's goods and lands; and left by a reasonable value. This is now imposed by parliament, and every town through the realm knoweth what a fifteenth for themselves doth amount to; because it is perpetually the same. 

Whereas the subsidy, though given of every particular man's lands or goods, must needs be uncertain, because the

efface
effecte of several men is a rare uncertainty. And in that regard, a fifteenth seems to be a recentia annually laid upon every town, according to the land or court belonging to it: Whereunto Colonel in his Book, makes frequent men use, particularly pag. 188. of Wells in Sommersetshire, thus, *Quae tempore, et teret quam felicitatis, &c. &c.* And these rents were taken out of Domley-lake in the Exchequer. So that in old time this seemed to be a yearly tribute in certainty; whereas now, though the rate be certain, yet it is not levied but by parliament. Coxeil, edid. 1727. See *Civ. & Crim.*

**Figuring and Quitturi.** Is prohibited by statute, in a church or churchyard, *ejus.* on pain of commnunication, and other corporal punishment. Stat. 5 & 6 Ed. 6. c. 4. See *Crime there.*

**Figures.** In an attempt in an inferior court, the time of the procesce alleged was in figures, and upon error brought, judgment was reversed for this cause. Sid. 40. Pafi. 15. Bar. R. Ducket v. Bland. *Ebd. 19. S.* C. by the name of Bajley v. Bland. It was moved to quash an indictment, because the year of the Lord was omitted in figures. But on Pali. Ch. 1, the year in which the King is enough, Med. 78. fl. 40. Mcbl. 22 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 judgment unless the court, *Ejus.* Hill. 23 Car. 31. St. 88. *Hier. v. Hypaed.*

**Roman figures** are good in pleading, but otherwise of English figures. 2 Liv. 102. Pafi. 26 Car. 2. Bar. *Hawkins v. Mills.*—If an indictment sets forth the file of the day or year, in any figures but Roman, it is indefinable. In inden. *Ejus.* pro spero & labore, it was excepted, because the sum was in figures; *sed non allocutus,* for they were (XII) Latin figures, which is well enough; otherwise, if they had been (12) English figures; and it would have been otherwise, if they were in figures in an inferior court; and therefore it was adjudged for the plaintiff. This was in a writ of inquiry, Skin. 409. Hill. 35 W. 4 & M. B. R. Hibbert v. Crowther.

Stat. 6 Geo. 2. 14. Allows the expressing numbers by figures in all writs, *Ejus.* pleadings, rules, orders and indentures, and as often as the same shall be commonly used in the said courts, notwithstanding any thing in the flat. 4 Geo. 2. 26. See *Falsa Latit. Filater or Filiett, (Filiarizius, from the Latin filiam, a thread) is an officer in the *Common Pleas* (so called) because he files those writs under which he makes process. There are fourteen of them in their several dispositions and counties; they make out all writs and processes upon original writs, as well in real as in personal, and mixt actions; and in actions merely personal, where the defendants are returned or summoned, there goeth out the difference infinite until appearance; if he be in error, the plaintiff files, if the plaintiff will; or after the third capias, the plaintiff may go to the exequor of the thing, where his original is grounded, and have an exequor or proclamation made. Alto the filater maketh all sorts of writs in view, in causas where the view is pray'd; and upon all replications or confirmations upon the plaintiff return, the defendant, and witherum. They enter all appearances and special bills upon any process made by them. They make the fift five focias upon special bills; *vires de bakes corpus,* *differi* no prses, *volubilius* and *dusci* teum, and *judicanda* upon special bill, or otherwise; *vires de bakes corpus* upon the plaintiff's return, the defendant is detained with other actions; *vires de adjournment of a term, in case of petition, war, or publick disturbance, and (until an order of that court made 14 Jac. which limited the filaters to all matters Vol. 11. No. 74. and proceedings before appearance, and the proprosixiers to all after) did enter declarations, impertinences, judgments and pleas, whereas a defendant's hand was not requisite; and made out writs of execution, and divers other judicial writs after appearance. And in the King's Bench of later times, there have been filaters who make procures upon original writs returnable in that court, upon an order thereupon. The filaters of the Common Pleas have been officers of that court before the statute of 10 H. 6.

**Filiatum.** The file or thread upon which writs or other papers are filed up together, to preserve them—*filum breve filum in filacia Marischals.* Will. Thorn. Hence *filiatum* filiarius, or file-keepers in our courts of judicature, were called *filatters.*

**Filibale, quads, Filibale: A fort of drinking in the field by the bailiffs of the hundreds; for which they gathered money of the inhabitants of that hundred. It was prohibited in the days of Bradon, lib. 3. fol. 117. According to Sir Edward Coke's 4th fol. 507, an extortion more comptumart. The true word is *filiataris,* quod computationem in campis figuravit. See *Entale.*

**File, Filiatum, Is a thread or wire, wherein writs, and other exhibits in courts and offices are filed for the more safe keeping of them. File also signifies attain, from the Sax. *fianum,* iniquitate.*

A caafe where they were not done in a wett and son, and there having been great heat, and indecent reflections on both sides, in bill and answer, and the matter being ended this vacation by compromise; upon motion this day made in court by Mr. Porter, the bill and answer were taken off the file by consent. Med. 1883. *Law. & Ed*. 189. *Tremayne* v. *Tremayne.* Information filed, without recognizance entered into by the party, is ill, but the court cannot take it off the file; when once a thing is on the file, it cannot be taken off without an act of parliament; no, not by consent of parties; as in the case of Dr. Widdington a mandamus, the college made a very scandalous return, and to which he and the college agreed; and then they moved to take the return off the file, but the court refused it, saying, it could not be done without an act of parliament; only they ordered a warrant to be entered thereupon; that in this case the method may be, to enter the irregularity on the roll, with a verdict *processe inquietantia.* See car. *advocare erat.* 12 Mod. 155. *Micb. 9 N.* 3. The King v. Lambert. If a bill against an attorney be filed irregularly, it may be taken off the file. *Per cur.* 12 Mod. 161. *Hill.* 9 W. 3. &c. in case of *Widdington.* *Blackley & Perkins.*

**Filiatum & Filiatum, A ferny ground. 1 *fili.* 4. *ubi* *filiatis* erat. *Filiulus* is properly a little son, also a godson, and a nephew. *Cowell, edid.* 1727. **Filiata. See *Falsa & Filiata.*

**Flitun, Filatum, A covering for the head made of coarse woods, not woven, but beaten together; a hat, a felt. *Cowell, edid.* 1727.**

**Flum aquae, Is the thread or middle of a stream, where a river parts two lordships—*Et hukdonum ftalitas aquae ad flum aquae praefidet.* Ex Reg. priorit. de *Rem. Wormaly, Wit.* 36 Med. 191. *par. 300.* a. *Et de maimio factis in guttis wovius* in col. *all ad flum gerram riparia, &c.* Rot. Pat. 4. H. 6. m. 11. *par. 2.* Et totam ilium partem remans fui quia dof inter flum aquae de Ebros. *& flum aquae de Tame.* Reg. de *Leic.* in *Bibl. Cot.* 6, *Tis.* 14 Ed.* 1. Rot. 56. 204. & *Cromwell.* *Parker* to things. *Tissa* *filia* *fino pars non simetur.* *Fleta.* lib. 2. c. 70, *par. 3.*

**Flunary, See *Blomary.*

**Flanders, mentioned in flat. 18 Ed.* 3. *falt.* 1. and 14 R. 2. c. 10. *seem to be all one with those whom L now
now we call searchoes. See 17 R. 2, cap. 5. 1 H. 4. c. 13, and 31 H. 6. c. 5. They are employed for the discovery of goods imported or exported, without paying cutm.

Hint. (Finit.) Is a formal or customary conveyance of lands or tenements to successors, or to the survivors of the donee, if any. Finit, fett. 25. It is an act of thing inheritable, being in offl tempore fait, to the end to cut in off all controversies. The fain Wilt in his 2 Par. Symbol. fett. 1. thus defines it, To be a covenant made before justices, and entered of record. But Gallimond more properly thus, lib. 8. cap. 1. Finit of amiable or benefactive force, is an act of the commonalty, or of curia Domini Regis, or of the curia Regis, and curia Domini Regis suit jurisdiction. And lib. 9. c. 3. Talis concordia finit dirictor, et quid finem imposit negotii, adaequat natura post litigantiam ab eandem potestatirelire, . And Bracton, lib. 5. cap. 28, num. 7. thus, Finit in die directum concordia, quia imposi finem ethicis & defequentia pertinentia. The author of the New Treatise of the Law defines it thus, to be a final agreement, had between persons concerning any lands or rent, or other things whereof any suit or writ is between them hanging in any court. See the New Book of Entries, verbo Finit, and the 27 Ed. 1. 8. 1. cap. 1. This fain is of so high a nature, that Bracton, lib. 6. cap. 7. num. 3. fittis in curia Domini Regis et non abfoluti, & ab elio quia rema post finem interpretare, us in his Rex, in curia curia finem fimt. The Grallians would call this solemn contract, Transfationem judiciarem de re immobile, because it hath all the faculties of a deed, and doth bind women as parties, and others, whom ordinarily the law disbles to tranfaff, on condition of the fain, that all presumption of deceit or evil meaning is excluded, where the King and his court of justice are supposed to be privy to the act. Originally the use of this final concord was conferred and allowed, in regard that the law, and ancient proceedings, no plaintiff (giving real securitv de domane fals it is in the East, and in the West) did not proceed without the assent of the parties. So that fines have been used in personal actions, and for no greater a sum of money than 50s. But finity of wit and reason hath in time wrought other uses of this concord, which in the beginning was but one, viz, to secure the title that any man hath in possession. A schoolmaster hath the faculty of writing with more certainty to pass the interest or title of any land or tenement, though not controverted, to whom we think good, either for years or in fine: Infomuch, that the passing of a fine, in some cases, now is but merq fictis juris, alluding to the use for which it was invented, and supposing a doubt of controversy, where in truth none is, and so not only to work a present prescription against the parties to the concord or fine, and their heirs, but within five years against all others, not expressly excepted, (if it be levied upon good consideration, and without conven) as women convey, persons under one and twenty years of age, persons of unsoundness of mind, do not take out of the realm at the time when it was acknowledged. This fine hath in it five essential parts; i. The original writ taken out against the concernor. 2. The King's licence, giving the parties liberty to accord, for which he hath a fine called The King's fain, being accounted a part of the revenue of the crown. 3. The concord, which is, therefore, in this act, whereas we beginneth, And the agreement is with, &c. 4. The note of the fain, which is an abstract of the original concord, and beginneth in this manner, Between R. complainant, and S. his wife defaulter, &c. 5. The base of the fain, and the very execution of the fain, and the form of proceeding, as the form of proceeding in the court of the Lords the King at Westminster, from the day of Easter in fifteen days, in the &c.

that the foot of the fine includeth all, containing the day, year, and place, and before what justice the concord was made. Co. vol. 6. fol. 36, 39. Toye's case. This fine is either fogle or double. A single fain is that by which nothing is granted or rendered back again by the concernor, and the conclusion is in the fine, and the concernor containeth a grant or render back again, either of some rent, common, or other thing out of the land, or of the land itself to all, or some of the concernors for some estate, limiting thereby many times remainders to financers, who are not named in the writ of covenant. See 1 Ed. 2. fol. 38. Again, a fine is from the concernor divided into a fine executus, and a fine executur. A fain executur is such a fine, as of its own force gives a present possession (at the least in law) unto the concernor, so that he needeth no writ of habere facias feignam for the execution of the fain, but may enter, of which fort is a fain for cognitio ne de re cognita, and that is, upon acknowledgment that the thing mentioned in the concord be justifi coagratu si ilia quia idon habere de bona equitatis. Well. fett. 51. And the reason of this fiction to be, because this fain paith by way of release of that thing, which the concernor hath already (at least by the writ) given the concerner, the old fain or superseded fain, as a Supra, &c. The old fain or superseded fain, as a Supra, &c. The old fain or superseded fain, as a Supra, &c. Co. Rep. lib. 3. fol. 82. Case of fain, which is in very deed the fain executus of all. Fains executur are such as of their own force do not execute the possession in the concernor, as fines for cognitio de droit tautum, fines far dures, grant, release, confirmation, or renders for if fich fain be found, as a Supra, &c. Fain unless he is one who are in possession at the time of the fain levied, the concernor must needs have writs of habere facias feignam, according to their several cafes, for the obtaining of their possessions, except at the leaving execution fain, the parties unto whom the estate is by them limited, being in possession of the lands passed thereby, which fains do enure by way of extinguishment of right, not altering the estate of possession in the concernor, but perhaps bettering it. Well. ubi supra, fett. 20. Touching the form of these fains, we consider, upon what writ the parties are to proceed, and the manner in which commonly upon a writ of covenant; and first there must pass a pair of indentures between the concernor and concerner, whereby the concernor covenanteth with the concernor, to pass a fine unto him of such or such things, by a day set down: And these indentures, as they are Steel by this fain), by the very former gift of the fain, and upon this covenant, the writ of covenant is brought by the concernor against the concernor, who hereupon yeeth to pass the fine before a judge; and so the acknowledg-
mendment being recorded, the concernor and his heirs are pre-
ently concluded, and all, strangors not excepted, after five years are barred. But fain executur is grounded be not a writ of covenant, but a warrantia charter, or a writ of right, or a writ of seque, or a writ of customary and services; for all these fains may also be found, Well. ubi supra, fett. 29. This fine is now levied in the court of Common Piaos at Westminster, in regard of the solemnity thereof, ordained by the statute of 15 Ed. 1. before which time they were sometimes levied in the county courts, and the Exchequer, as may be seen in Origins Jurisdictiones & alibi. Plostephen says there were fines levied before the conquest. Fubbe says he hath seen the exemplification of one of Henry the First's time; Doubles, none till Henry the Second. Casell. edit. 1727.

A fine is a covenant of the parties on record, by which they are transferred from concernor to concernor, with or without a render; and this is esteemed a conversion of greater fecurity than a feoffment, or the infevility by livery, being not only equivalent to the notoriety of livery, but having the confiant and undoubted credit of a court of chancery, and the advantage or other convenience and security, that it does not only transfer the right of the vender, and all claiming under him,
him, but likewise extinguishes the right of others who omit to make their claim in due time. 2 Bac. Abr. 510.

Fines seem originally to have been invented and allowed of for different ends and purposes, and they are now applied to; for they were at first no more than a friendly composition and determination of the matters in debate between the litigants and the fines in the lord's court; and this way of compelling differences was early admitted in those days, because the stubs of the court, who were judges of all suits, were by these amicable compositions the sooner diffimul'd 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 congé de accorder, as they do to the King at this day, which was equivalent to amercements, which were paid him in adversary suits. 2 Bac. Abr. 520, 521.

From an observation of the peculiar benefit and fecurity from fines, and from the convenience and encouragement they received from the courts of justice, men began to engage themselves, and oblige each other by covenants to compose their differences; and they were the easier drawn into this amicable way, because it was not attended with the usual expences of adversary suits, which being generally protracted with warmth and animosity, by the parties litigating, must necessarily involve one or both parties into difficulties, which such friendly compositions are free from; and the judges, considering these agreements as the publick acts of the court, allowed them some function with their own judgments; and hence it came to be imposed into that useful and common allendance which we find them to be at this day, as they stand upon the statutes of 4 H. 7 cap. 24. and the 32 H. 8.

2 Bac. Abr. 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 dehnsius.

4. Statutes, with notes and adjudications upon them, concerning the manner of levying fines; exceptions to fines; 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 a term for years, or have not inchoate.

6. The remedies given to strangers by claim and entry for the preformation 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, and 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 paffeth unto, or is superseded in the conuene; for such a fine is a feufoold of record, as this fine come ces, or for reliefs, or confirmation, or for forrender; executory, as when no estate is vested in the conuene, until it be executed by entry or action; as fines for grant & render by the conuene, which must be made upon a fine come ces, or for reliefs, &c. or other fine which is executed; or otherwise the conuene could not make any grant and render of that land, &c. which he had not. 2 Inf. 513.

It is not called executed, because the conuene is in possession; but because the fine is executted between the parties; so that the conuene cannot for execution, because the fine itself is superseded to be executed. A fine is not called executory, because the fine does not execute any execution, but the conuene may execute it, either by entry or by suit. See C. R. in Fines 4.

Of fines these are four kinds: 10. A fine for cognizance de droit come ces que il ad de fin done, i.e. an acknowledgment of the right of the cognizor; as that which he had of the gift of the cognizor. It is a single fine, and admits the pollution (at least in law) of the lands, by virtue of a feufoold or former gift of the cognizor, and works the party released, a fee simple pafli; without the word heirs, and nothing being reserved back to the cognizor. This is the principal and freell it is, and a fine executed, so that the cognizor may peremptorily enter. Wood's Inj. 240.

20. A fine for done, grant & render; which is a double fine, a man may give two, &c.; a fine for cognizance come ces, &c., and a fine for conjuance, &c., and where the cognizor, after a releafe and warranty made to him by the cognizor, both grant and render back to the cognizor, the lands, &c. limiting oftentimes the reasonsplainly tho' he began to release the land, and the party is in possession; this fine is executed, otherwise he must enter, or have the writ of habeas fetus jefitanam. Wood's Inj. 240.

30. A fine for cognizance de droit tansum; which is commonly used to pass a reverfion. It may be expreffed in such fuds that the particular effe is in another, whom the cognizor is willing should have the reverfion. Sometimes it is used by tenant for fee, to make a grant and release to him in reverfion. In a fine for cognizance de droit tansum, the cognizor hath a freehold in law in him before he enters. Wood's Inj. 240.

40. A fine for done, grant & render, and where the cognizor is fee'd of the lands contained in the fine, and the cognizor hath no freehold therein, but it paflis by the fine. It is commonly used to grant away eftates for life or years. And if the cognizors are not in possession, they must enter, or have a writ of habeas fetus jefitanam. Wood's Inj. 240.

There are five sorts of fines, of which three are executed, viz. for cognizance de droit come ces, &c., for reliefs, and for forrender; and two executory, viz. for cognizance de droit tansum, and for grant and render. Fines upon forrender are here expressly fo, or amounting to a forrender. A fine upon an expret forrender, or when theolle for life, or for another's life, or tenant in tail after paffibility, tenant in dower, or by the curtesy, by fine forrender their eftates to him in reverfions; and the form of the fine is fuch in effect, as the fine for cognizance de droit, should be done, are in the fine upon forrender, and the clause of the warranty omitted. Co. Read. on Fin. 4, 5.

All fines are either executed, as fines for cognizance de droit come ces, &c., fines for reliefs, and fines for forrender; or executory, as fines for cognizance de droit tansum, and for grant & render. The fine for cognizance de droit tansum seems to be the most ancient; for the cognizor is 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 fentin given him by livery in the country, and for his farther affurance obliged the vendor, by covenant, to levy a fine; and thus the fine for cognizance de droit come ces, &c. came in use, which supffes a precedent gift, by which the conuene was put into poffefion, and consequently there was no execution of what he had already. Co. Reading 4.

This fine come ces, &c. is most commonly used, being the forreft for the purchaser; in which it is to be observed, that this fine and that de droit tansum convey a fee simple to the conuene, without any condition or contingency; for when the conuene acknowledges the land to be the right of the conuene, &c. repugnant and contradictory to his own acknowledgment, to claim any right or interest in the land in reverfion or remainder; besides, in every judgment a fee simple is recovered, and the conuene coming in lieu of the judgment must be sufficiently import as much, unless the express acknowledgment, from the parties qualify it. Co. Litt. 9, b. Co. Reading 4, 7.

Upon a fine for cognizance de droit come ces, &c. the conuene can't receive a rent, because the conuene supposing a precedent gift, he can't charge the inheritance which he has given intirely away; and the reddendum comes

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For the former reason the judges will not, or at least ought not, to admit of a fine upon condition, because such a fine does not positively determine and settle the right of the fee, it being uncertain whether the confuee 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 such fines are admitted by the judges they are valid and shall stand; the rule, quod fieri non debet sed factum vealt, obtaining in this case; because fines being the private agreement and concord, it were to trifle with the obligation of the tenant, that ever one ought to be preferred sacred, to suffer another party to recede from their contrafl, after their solemn composition acknowledged on record, and received in the most solemn manner by the judgment and decision of a court of justice. 5 Co. 38 b. 2 Roll. Abr. 18. Bro. cit. Fin. 5. 3d. Reading 5.

If A. makes a lease for life, and afterward grants the revision by fine to B., for life, the remainder in tail; in a quod juris clamat against the lease, he would have surrendered to the confuee, referring a rent during his life, but the court refused it; for had this surrendered, with the revocation of the rent, been made, it might have been that the rent would not continue according to the limitation of the fine; for if the grant of the revision died before the tenant for life, the remainder-man in tail should hold the land disfranchised, and the tenant for life could not enjoy the rent as long as the fine gave it; but if in this case the lessee had surrendered to the grantee for his own life, with a revocation of a rent, this might have been admitted, for this is no absolute surrender; and each party may enjoy what the fine gave him, according to the several limitations thereof. Co. Reading 5.

If there be leave for life, the remainder for life, and the lease be a fine for a free covert de droit to him in remainder, this enures by way of surrender; because by this fine he only acknowledges all the right he has in the land to belong to him in remainder; but if the lessee had levied a fine, &c. to him in remainder, it had been a forfeiture of both their estates, and he in revocation might enter immediately; and the reason of the difference is this, the fine for a covert de droit came see, &c. always grants a fee-simple, which pallet by the precedent gift, as the fine supposes; but the fine for a covert de droit tantum only conveys all his right, which is intended all he can lawfully pass away. 3d. Reading 5.

If A. die intestate, as heir of the gown of the mother, and he and his wife levy a fine to A. and B. with warranty, and A. and B. by the same fine grant and render to the husband and wife in tail, remainder to the heirs of the husband; though it was urged, that the feinin of the husband, that is, that nothing was lowered by the fine, yet resolved, that the confuee was more than a bare instrument, and that the estate was once in him; and that the fine and render is a conveyance at Common law, and the render makes the confuee a new Purchaser, as much as a foftime and re-infruit.

If A. die intestate, the first part of a fine is the original writ, and without this the fine is erroneous, and may be reversed for error in B. R. this being absolutely necessary to bring the parties within the jurisdiction of the court, and though at this day the original is generally a writ of covert
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constancy or negligence. 5 H. 4. c. 14. 5 Co. 39. b. 2 Sid. 55.

The next and most material thing considerable in a fine is the King's silver; this is entered on the writ of covenant, and gives it the force and effect of a fine, and is granted to the King pro licentia concordati, or cage de concord., in composition of the same breaches, 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 sum given is expressed, together with the plea, and between whom, with mention of the land for which it is given. 2 Inst. 511. 5 Co. 39.

It is likewise called the po拭 fine, in respect of the premier fine in the Hanaper, 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 as the premier fine be 0. 8 d. this is 10 l. 2 Inst. 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. 2 Inst. 511.

But if the cononor dies before the King's silver is entered, the fine is voidable, and may be revoked by a writ of error; because this being given pro licentia concordati, 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 before he doth, the fine is erroneous, as a judgment given in an adversary suit after the death of one of the litigating 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, there the fine is erroneous; but where after the cononor made the cononor die 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 femme make cononor before commissorioners the 26th of March, the femme dies the day following, and upon a writ of covenant made returnable the Holio term preceding, the King's silver was entered as of that term, and the fine was adjudged to land; for where there doth not appear an error on the face of the record, the judges in favour to fines, which so much strengthen mens titles, and quoad partibus, and Radiation 3.

The note of the fine is no more than a docket taken by the chirugrapher, from which he transfers the indentures, which are delivered to the party to whom the cononor was made; and when this is done, the fine is said to be ingrossed. 5 Co. 39. 2 Inst. 468. F. N. B. 12.

A fine was thus, Hec &c finallis concordia fatta apud Wyfum, in curia dominii regis, &c. and mentions the day, year and place, and after what justices the cononor was made. 5 Co. 39. Co. 39. 3.

The other parts of the fine are the foot and note of it; the foot of the fine runs thus, Hec &c finallis concordia fatta apud Wyfum, in curia dominii regis, &c. and mentions the day, year and place, and after what justices the cononor was made. 5 Co. 39. 2 Inst. 468. 4.

A fine was thus, Hec &c finallis concordia fatta in curia regis apud Wyfum, a dio Sancti Michaelis in trei feptiman' anno decim Williami Teriti eorum Thom. Terov, &c. &c. fatta in croft, Sancte Trinitatis, 1 aunn concorr. & recordar. eorum irifam pofitam; so that the cononor of the fine was done term, and the recordar. of that done following, 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 cononor was made, and that the concordia fatta in curia is the complete fine. 1 Saftk. 341.

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

Regularly a fine may be levied of any thing, whereof a precise quod redditus or faciats lie, as the writ of cultums; Vol. II. No. 74.

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towns and counties, as De manorio de D. cum pertinencii; yet it seems best to express all the several towns into which it extended; as De manorio de S. cum pertinencii in D. & E. Weit. Symb. f. 26. cites 10 Ed. 4. f. 9. a. 43 Ed. 3. f. 9. a. Bract. lib. 4. c. 31. feft. 3. 9 Ed. 4. fol. 61. g. 16. a. 17. b. 11 H. 7. f. 22. a. 49. a.

A cattle or an hundred may be parcel of a manor, and pass by the name of the manor, whereof they are parcel, 26 Ed. 2. a. 54. and one manor may be parcel of another, 2 Ed. 3. fol. 36. And a cattle may be demanded of the serjeant major de caffell de B. cum pertinencii, 1 Ed. 3. f. 4. And an hundred may be demanded by itself, as De hundred of S. 27 H. 6. f. 2.


If an entire manor, or mediage, or other entire thing be divided or parcelled, and after a fine is levied of some of the parts of the thing fo severed, then must not the fine be de mediate, or partia parte, or other part of the manor, mediage, or other thing; but such part must be demanded by the name of the whole thing. Weit. Symb. f. 26.

So if a mediage and 20 acres of land be partido into two parts; the fine of the one part must be de novo miflagis & decem acris terre, &c. and not de mediate unius miflagii, &c. 20 ancurum terre; for the things now divided, if mediage, give them the name of a community, whereas the less in quantity than the whole was before division made thereof. If a thing be twice named in a writ of covenant, it hurteth not, as a manor and a hundred, parcel of the same manor, Weit. Symb. f. 26. cites 27 H. 8. 2.

A fine was levord de duobus tenementis, and for that reason was revolled for the word tenement does not comprehend any certainty; for it takes in mediage, land, meadow, pasture, &c. and whatsoever lies in tenure; and it will pass rent or common. Lo. 188. Trin. 31 Eliz. B. R. Steel v. Courtris.

Abandonment, 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 foftinent; for there the intent of the parties shall help it. No 7. Eliz. v. Heyton. 22.

A fine of land will not be a bar of rent; as leiffe for life, remainder for life of rent; the first leiffe purchase the land, and levies a fine of that; this shall not bind him in remainder of the rent; per Wynch. 1. Benoni. 155. in the case of Kibbell v. Tacker, cites Palmer's cafe, and Smith and Stapleton's cafe.

If tenant in tail of any office levyes a fine of land belonging to the office, this shall bind his influe; yet the land was not intailed, but the office; per Elborv Ch. J. 2 Roll. R. 500. Hill. 22. "Sic in the cafe of Folliit v. Sanders. A fine may be levied of a flake in the New River water, by the description of so much land aqua coperta'. 2Win's Rep. 128. P. J. 1723. Dibshter v. Bartholomew.

3. Who may levy fines; and of taking conformance by de dimas.

And here it must be first observed, that whatever legal defects may be found in the conuon, the fine shall stand in all cases, except that of an infant, tho' the judge omits a very necessary part of his duty in not rejecting such fines. Co. Reading 8. Inj. 515. The principal defects are either want of discretion and understanding, as in infants, idiots and persons of unsane memory, or want of power, as fomes covert. 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 infant state, they are incapable of, yet want of civil societies have so far supplied that cefce, and taken care of, as to allow them to contract for their benefit and advantage, with power to receive from and vacate it when it may prove prejudicial to them; now the method to fet aside such a contract must be by matter of equal and sufficient cause, and the manner is as follows: if an infant levies a fine, which is no more than his own agreement recorded as the judgment of the court, he must revive it by writ of error, and this must be brought during his minority; that the court of B. R. may by injunction determine the age of the infant; if he doth not, the judges by adjourn may in such cases inform themselves by witnesses, church-books, &c. 2 Bat. Abr. 526. Co. Lit. 380. b. Mor. 76. 2 Roll. Abr. 15. Bro. tit. Errors. Bro. tit. Fines, 74. 79. 2 Inf. 482. 2 Bully. 320. 12 Co. 122.

If an infant brings a writ of error to reverse a fine for his nominee, and after injunction and proof of infancy by witnesses does before the fine is revered, his heir may revive it; because the court having recorded the nominee of the conuor, ought to vacate his contract when he appeared to be under a manifest disability at the time he entered it, and by virtue of the writ of error. If the fine is acknowledged a fine, and the conuors omitting to have the fine ingroiled till he came of age, in order to prevent the infant from bringing a writ of error, yet the court, upon view of the conuence produced by the infant, and upon his prayer to be ingroiled, and his age examined, recorded his nonage to go back as far as the benefit of his writ of error, which he must otherwise lose, his nonage determining before the next term. Mor. 74.

As to ideals and lunaticks, 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 infecuirty which may arise in contracts from counterfeit madness and folly, but their heirs and executors may avoid such acts in pais by pleading the disability; 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. 4 Co. Lit. 247. Bro. tit. Fines, 62. Cas. Eliz. 309. 622. F. N. B. 202.

But neither the lunatick himself, nor his heir, can vacate any act of his done in a court of record; and therefore if a peren non comus 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 disability, yet when it is once received, it shall never be reversed, because the record and judgment of the court being the highest evidence in the law, presumes the conuor, at that time, capable of contradicting; and therefore the credit of it is not to be contested, nor the record avoided by any averment against the truth of it. 4 Co. 124. 2 Inf. 423. Bro. tit. Fines, 75. Co. Lit. 247.

So it is in the case of a fine levied by an ideot, it shall stand against him and his heirs; for no averment of ideocy
can vacate the fine, nor will any officer finding him an idot natiotcis be sufficient to reverse the fine, for that, by a certain practice, they shall not only, by by trying them by other rules than themselves, 2 And. 193. 4 C. 124, a. 125. b. Bras. tit. Finers, 75. Ca. Lit. 247.

And as fines ought not to be taken from lunatics and idiots, nor from either old or strong lunatics, or insane, if they be weak or in former age and sickness, that will be no sufficient cause to refuse them. Wits. Fin. sect. 4.

As to fame covert, from the intermarriage the law looks upon the husband and wife as but one person, and therefore actions of but one will between them, which is placed in the husband as the fist and ablest to provide for and govern the family, and therefore 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 an act of his shall prejudice her or her heirs in it, unless the join him by some matter of record, and on examination testify her assent to such disposition. 10 C. 42. b. 43. a. 2 Idf. 510. 1 Sid. 1. 1 Roll. Abr. 347.

But those books which say, that a fine shall not bind a wife, whereas the law prescribes, it fall 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 receive a fine from a feene covert without examining her, left it should not proceed from her own freedom and consent, otherwise an information shall be made, and without any examination, 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 were to relieve the credit of the judgment of the courts of justice, which is the highest evidence of the law. 2 Bac. Abr. 537.

The statute of 15 E. 2. called The Statute of Carriages, introduced the dedimus, which is a special commision, granted out of Chancery, to certain person therein named, to take the conuance of such persons, as thoro' age or sickness are not able to appear in court in person. 2 Bac. Abr. 537.

By this statute, no-body can be a commisioner but the judges, and two or one of them, by the consent of the ref, may receive the conuance; and if there go but one of them, he shall take with him an abbot, a prior, or a knight, informs of good men be examined, and writ of error have been allowed to reverse fines, where the conuance hath not been taken before such persons. Bras. tit. Finers. 120. F. N. B. 146. But the present practice falls short of the order this statute prescribes, and it is now sufficient if one of the commisioners be a knight, or that who executes the commision be a licent. D. gives its alterator to the commision, by which great abuses have happened in taking of fines. 2 Bac. Abr. 537.

By the custom, the chief justice of C. B. may take conuances any where out of court, and certify the fame without any dedimus; and if a forfeit have a pattent to be C. J. he may take conuances without a dedimus before he is sworn. Co. Reading 10. Co. Elia. 469.

If a fine be levied to one of the justices of C. B. and the said justice takes the conuance, 'tis void gain judex in propriu causa. Co. Reading 10.

In the case of the above, it may be directed to two jointly, and the conuance is taken by one only, the fine is erroneous; for where two are invoted with a joint power, it can't be by any construction from the commision be executed by one only. Co. Elia. 469.

The same reason subsists the substance of the writ of commision, and therefore must bear piece after piece, otherwise it is error, and must be signed by the Lord Keeper or Chief Justice, or by some of the justices of the circuit where the lands lie. F. N. B. 146. Co. Elia. 677. 740. Co. Reading 10. Bras. tit. Finers. 116. 1 Roll. Abr. 794.

268. 290. 296. 247.

If the commisioners refuse to certify the conuance to the court in convenient time, which is a year and a day, certiorari is to be awarded against them, comprehending the substance of the dedimus, and how they have taken the conuance, and commanding them to certify it; and in the following cases, they may be cited in, they an order, a plaint, and attachment shall issue against them. F. N. B. 147.

If the commisioners die before the conuance be certified, their executors must certify it upon certiorari to them directed, and upon their refusal, like processe be as in the former case. Co. Reading 10. F. N. B. 147.

If a dedimus be awarded to take the conuance from several persons, the commisioners may take the conuance from each of them, and at several times, for it may happen that they can't meet at one place at the same time; and if the commisioners return the conuance but and that the order of the commisioners should be annexed the writ, for the refuial of any one of the commisioners can be no reason to delay or hinder another to transfer his right. Co. Elia. 576. 577.

The court of C. B. ordered the new-mover to profess an obligation against commisioners, to the issue of a fine of an infant. Misb. 22 Car. 2. C. B. 3. Law. 36. Hutchinson's case. Per North and Wingham J. There is a great trust reposed in the commisioners, and they are to inform themselves of the party's age, and a voluntary ignorance will not excuse them. Mad. 246. 247. Pagh. 29 Car. 2. C. B. in the case of Bever v. Parratt.

A dedimus prifonarius 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. Godd. 356. Trin. 27 Jan. B. R. in Leonard's case.

A det. pr. is directed to four, to take the fine 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, none of their certificates are good. Godd. 356. p. Houghton J. in the case above.

A dedimus prifonarius to make a conuance of a fine is directed to J. S. knight, and he takes the conuance, and certifies it by the name of J. S. knight; whereas in truth he is not a knight; this is not erroneous, nor affignable for error that he is not a knight; for it is against the record. Jenk. 268. pl. 3. 327. A dedimus to make a fine may be given to B. esquire, and was transferred by A. B. knight, and held good. Jenk. 370. pl. 3. cites Avondel v. Avondell. Pope. 33. S. C. Co. E. 577. Tim. 41 Elia. B. R. Co. Juf. 11. Pagh. 1. Yac. B. R. 8. 57.

The' now most fines are in fact taken by dedimisi, yet they are recorded as taken in court, and this to prevent questions about captions. Per car. 10 Mol. 45. Mol. 10 Ann. B. R. in Lord Say and Seals's cafe.

3. Statutes, with notes and adjudications upon them, concerning the manner of levying fines; exceptions to fines; plannum of fines; proclamations of fines, who shall be bound by fines levied, and their operation to bar the issue in suit. Stat. de Finibus, 18 Ed. 1. Jus. 4. (intitled, The manner of levying of fines: What things are requisite to make them effectual; who are bound by them, and the like.) When the original is read in the presence of the parties before the justices, a forfeit shall fay, Sir justice, leave to agree: The justice shall fay, What will Sir R. give and shall name one of the parties. Then, when they are agreed of the sum of fines to be levied, the justice shall, according to the king, the justice shall fay, Cry the peace: Then the reformatum shall fay, Inj. much as peace is licensed unto you in' S. A. and his wife, that here be, acknowledge the manor of B, with the oppor-


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nance, contained in the words, to be the right of R., as that which be both of their gifts; To have and to hold to him and to his heirs, of W., and A., and the heirs of A., as in demesne, rents, fequesters, courts, pleas, reliefs, escheats, mills, advowsons of churches, and all other appurtenances, rendering your good and lawful rents of the said lands, and all their heirs, within the said county, due and acconulated for all services. And the land will not.

For a final accord to be levied in the King's court without a writ original, and that at least below four juries in the bench, or in eyre, or in quarter within a week or thereabouts, and in presence of the parties, who must be of full age, of good memory, and not out of prison. And if a married woman be one of the parties, then she must be first examined by four of the said juries; and if she do not attend thereunto, the fine shall not be levied. And the cause whereof such false hoodworn to be done is, because a deterrent to his bar, of his great force, and of so

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The justice shall pay. What will Sir R. give? In the old editions of the statutes it is printed, What faithful Sir R. ? which is not reconcilable with any meaning whatever. This gross inaccurancy was corrected by Mr. Coke, who altered it, and the fine will give? on farther concludi

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 consorts are made to acknowledge the merit of B. with the aportenances, to be the right of our Lord the King, which is not the case nor what is sense. But if the consorts acknowledge the merit of B., etc. to be the right of R. that is, of Sir Robert, the

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

Privy juries] The number of juries here mentioned are not requisite at this day; but there must be above the number of any. And therefore a fine levied before Thomas Brian militi et jiciet juriaribus de comitatu hanc was not good. 2 Inst. 514, 515.

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By the words privies and strangers in the statute, if rem

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Jenw. 192, p. 97. Vol. 3241, &c. In Ed. Dorky's case, ecc. He is privy in blood only, and not in estate also, is not within these statutes, neither shall he be barred by the fine. As if land be given to a man, and the heirs females of his body, and he hath a fine and a daughter, and the fine be a fine, and dies without issue, this is no bar to the daughter; for though he be heir to his blood, yet fine is not heir to the estate, nor hath the need to make his conveyance to it by him; but if the father had levied it, yet it would have been otherwise. 3 vol. R. S. L. 215, p. 116, 119. And by statutes.

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All but other people of the world] In these words are in
declued as well tenant for years, tenant by l.ordly

merchant and staple, escheasters and customary holders, as tenants of fee simple and heridimann, if they be out of par

jures, and if such a fine be levied by strangers cannot bar him, that is in possesion. And albeit, the words of this law are very general, yet do they not abrogate the statute of W. 2. De demis

conditions, 2 Inst. 517.—If tenant in tail omits an issue, this fine bars the entail, and every other person who has right, if he does not own and 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. Jenw. 192, p. 97. cit. 19 H. 8. 6.
Forasmuch were dainted that within this land, IJl. 76. for, myself, and for my heirs, or used, permitted, to avoid fines by the averment aforesaid. 2 Jiff. 254. Ca. 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, fo that by the law the conuife and his heirs are concluded, and eftates in fee simple, and voidants in fee tail, yet before the making of this fine; the said averment was received in avoidance of such fines, and for these two caufes, and in affurance of the ancient Common law of England, this fine was made. Ca. R. on Fines 15.

But it seems to me, by Lord Coke, that the shift of the said two errors, or misprisions of the law, permitted and suffered before this fine was made, was very ab- fard, and manifestly contrary in itself; for the heir of the conuife endeavored, by such eftate, to avoid the particular eftate re-taken by his an- cessor by the render; because, he that rendered, had nothing, but, as I think, in endeavoring to gain the fee-simple, he takes not only the fee-simple, but also the eftate for life, or other particular eftate, which also was rendered; for through the render was void, as then minus juifes allowed, yet the fine for conuife de droit come as, was good, and in the said fine being good, for the imperfect or insufficient render cannot impeach it) and the render being void, the recognize shall retain the land, and the heir of the recognize is utterly barred for ever; and therefore the words of this fine are true, viz. that such evertmentes were contrary to & confusion in fee tail, yet before the making of this fine, and whereof (as I think) were the causes of this fine. Ca. R. on Fines 15. Vol. II. No. 75.
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 p[er]son of the profits is maintainable.

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

* * *

4 Hen. 7, p. 33. 

4 Hen. 7, sect. 1. The proceedings so laid and made, the fine to be a final end, and conclude as well privies as strangers to the same, excepting women covert, other than being parties to the said fine, and every person then being within age of 21 years, in prison, or out of the realm, or not of whole mind at the time of the said fine levied, not to be entitled to the fine aforesaid.

Sect. 4. And saving to every person or persons, and to their heirs, other than the parties in the said fine, such claim and interest as they have to or in the said lands, tenements, or other hereditaments at the time of the fine ingrossed; so also, to the benefit of their heirs, if any, or in the estate of the heirs, or in the leases of those hereditaments, or by way of action, or lawful entry within five years after the said proclamations had and made.

Sect. 5. And also, saving to all persons such action, right, title, claim and interest in or to the said lands, tenements, or other hereditaments, as first shall grow, remain, or succeed, or come to them, after the said fine ingrossed, and proclamation made by force of any gift made in the tail, or by any other cause or matter, had and made before the said fine levied: So that they take their action, or pursue their right or title, according to the law, within five years next after such action, right, claim, title or interest to them accrued, defended, fallen or ceased.

Sect. 6. And the said persons and their heirs may have their said actions against the person of the profits of the said lands and tenements, and other hereditaments, at the time of the said fine to be taken.

Sect. 7. And if the same persons at the time of such action, right and title accrued, defended, remained, or come unto them, be covert de banns, or within age, in prison, or out of this land, or not of whole mind, then it is ordained by the said authority, that their action, right and title, they pursue their right to them, and to their heirs, unto the time they come and be at their full age of 21 years, in prison, or out of this land, uncover, and of whole mind, so that they, or their heirs, take their said actions, or their lawful entry, according to their right and title, within 5 years next after that they come and be at their full age, unless out of prison, or this land, uncover, and of whole mind, and the said actions pursue, or other lawful entry take according to law.

Sect. 8. And also, it is ordained by the authority aforesaid, that all such persons as be covert de banns, not party to the fine, and every person being within age of 21 years, in prison, out of the land, or not of whole mind at the time of the said fine levied and ingrossed, and by this said act aforesaid excepted, having any right or title, or cause of action, to any of the said land, and other hereditaments, that they or their heirs, inheritable to the same, take their actions, or lawful entry, according to their right and title within five years next after they come and be of the age of 21 years, out of prison, uncover, within this land, and of whole mind, and the said actions pursue, or their lawful entry take and pursue according to the law.

Sect. 9. And if they do not take their actions and entries as is aforesaid, that they and every of them and their heirs, and the heirs of every of them be concluded by the said fine aforesaid, in so full form as they be that be privies or parties to the said fine.

Sect. 10. Saving to every person or persons, not party not privy to the said fine, their exception to void the same fine, by that, that those which were parties to the fine, nor any of them, nor no person or persons to their heirs, nor the issue of any of them, had nothing in the lands and tenements comprised in the said fine, at the time of the said fine levied.

Sect. 11. And it is ordained by the said authority, that every fine, that hereafter shall be levied, in any of the King's courts, of any manors, lands, tenements, and other possessions, 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, so levied, be or were afore the making of this act; this act, or any other act in this said parliament made, or to be made notwithstanding.

This is an original, and not an explanatory statute, see 123. preceeding page, or pamphlet, to be annexed, read and understood, as the act of that time, and not a declaration, nor a summary of the former acts, nor a repetition of the former acts, but a necromancy, and abomination of the act, that fines ought to be of the greatest strength to avoid disputes and debates, &c. and therefore this statute does not extend to any fines levied by common law, see 3 Rep. 77, b. Fermor's case.

This statute extends only to fines, and not to nonclaims on a judgment in a writ of right, Co. Litt. 292.

So it extends not to land in ancient demesne; for the lord may avoid such fine by writ of detinue. Pl. C. 330. b.


The Lord Keeper's opinion was, that howsoever 4 H. 7, was, at the making thereof, as to railing, or not railing an eftates tail, yet when 32 H. 8. comes, and declares upon a H. 7. Now all fines are good to bar eftates-tail, Skin. 97. Hill. 33 Car. 2. in the Earl of Derby's cafe.

The fines levied according to this statute, and operations in the right, which answers Saul and Clerk's case. 310. 211. Salt. 432. Hill. Ann. B. R. in the case of Hunt v. Bane.

Sect. 1. 2. In three terms then next following] If one of the terms limited by this statute be adjourned, (because the statute days, then next enquiring) all the proclamation before are void, till the statute 1 Mar. 7. Rajgal, Finis, 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. 1.Skin. 95. Hill. 35 Car. 2. B. R. in Earl of Derby'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 State. Rym. 359. Murray v. Eyres.

The fines levied according to this statute are, as initio, as strong against entail, as 32 H. 8. Hob. 332. Macquillian's cafe. And therefore if a woman be tenant in tail, having issue a son and a daughter, and the son (being the first issue of the entail) leaves a fine, leaving the mother, and dies, and the survives him, this shall not bar the daughter, to whom the land entails defends immediately from the mother a judgment against three judges against one. Hob. 332. Mich. 19 Jac. Macquillian's cafe. But in case of collateral issue it is otherwise. Hill. 533. S. C. 32. S. C.

Tenancy
FIN

Tenant in tail, having issue, levies a fine, and dies before all the proclamations are made, and afterwards (the issue being beyond fee) the proclamations are all made, and then the issue claims; and it was resolved by all the judges, that the right descended to the issue, and to the father, before the proclamations, and by their heir without proclamations, or proclamations without a fine, will not bar the issue in tail, and that 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. Pacyh. 462.

Neither this statute, nor the 34 Ed. 1. of fines, says, in express words, that fines with proclamations shall bar the entail; these statutes only say, that fines with proclamations shall bar all parts and privies, and to strangers, if the stranger doth not bring his obit, or make his claim within five years after such fines, levied with proclamations; and the true intent of the 4 H. 7. was to take away the statute of Nonclaim, enacted the 34 Ed. 3. cap. 16. and to bar to the entail-tail any more than 18 Ed. 1. had done; as appears by the statute of 32 H. 8. 36. which ordinates fines levied, and nonclaim at fop. to bar the tail. 3 Tenk. 87. pl. 68.

As the faving is general to all persons and their heirs, notwithstanding nonage, infancy, &c. so is the condition general, to all heirs whatsoever they are, the words being, and to those possessor of their title, claim, &c. within five years after proclamations; for otherwife the faving shall be for all heirs, and the (fj) shall be all of heirs within age, and then the (fj) is not so large as the faving; and to the heir within age is bound to the condition of the first faving, as well as he is saved in the faving of the statute.

Heir in tail and heir in fee are all one by this statute. 3 Le. 227. pl. 304. Anon. 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, the fine shall be barred, for this fine, by the 3 Rep. 120. cited by fines, S.P. Br. Tail. Donor, &c. pl. 2. cites 19 H. 8. 6. that by the bell opinion the fpane shall be bound by the statute of 4 H. 7. c. 24. Bussack, and so fee that this statute, and the new statute of 32 H. 8. 36. are of one and the same effect, except that the one is an explanation of the other, and by tie one and the other, privies shall be bound immediately after proclamations which may be finnished in four terms, quot notas; and the five years is for strangers.

Sect. 4. To their heirs. Hobart Ch. J. said, that it was adjudged in the case of Godfrey v. Hats, that the fine of the estate-tail, being proclamations, notwithstanding, is not void as against the heir, a party to the suit, and the words, the oft'it is heir to him; but he said, that this word (heir) shall be expounded as (his heir), and that so they use to expound this statute which binds parties and privies, and that in such case the oft'it is not prior to the youngest; for he claims before him. Wrench 125. Hill. 32 Jas. C. P. in the case of Hilliard v. Sanders, 2 Roll. R. 500. 501.

Such right, claim, and interest, &c. It was resolved, that these words extend to the interest of a levy for years, tenant by fificate-merchant, fificate-flappe, eligit, guardian by himself or his children, eligit, by his executors, his late executors, paid, and every other such interest. Pacyh. 10 Jas. C. B. 5 Rep. 124. Soffy's cafe, cites Pl. C. 374. a.

Coffey's lands are within the words and meaning of this act. Pacyh. 10 Jas. 9 Rep. 152. Pacyh's cafe.

A fine with proclamations and five years bars all corportion, and every other corporation, and their successors, for ever, (by equity of this statute, the) speaks only of men and their heirs (as) Mayor and commonalty, Dean and chapter, &c. but it's otherwise of corporations which have not absolute ofides, without others, as Bishops, Deans, &c. But themonially shall be barred by the Statute of Monies, five years, and every successor shall have new five years. Pl. C. 538. Trin. 20 Eliz. Craft v. Hesell.

So an officer having land pertaining to his office as a pakey, &c. shall be barred by a fine levied by his dis-
of the saving is, that the party pursue his right within five years after his return, and this condition was never performed, because he never returned, yet there was no defect in him to prejudice his heirs, and the fine for the fault was by the other saving which relates to


§ 2. Having any right, or titles, or coats of arms

So that a fine with proclamations lands only as have thine, and he says, "This is not facets, common, other, or the like, out of the land, so that they shall not be concluded of their rent, common, eftatories, ways, or the like, they claim not within the five years. For the statute speaks only of the lands, and leaves none of the profit appender out of the land. Br. Finks, pl. 173.

Se 26 of an authority to sell land, he, who has such authority, may fall after the five years after proclamations; for he has no interest in the land, but has power only to sell it. Br. Finks, pl. 173.

Sect. 9. Concluded by the said fines for ever! If tenant in tail levy a fine, the issue in tail is priory, and therefore barred of averting quid partes fines salis habentur; are adjudged, per tist. cur. Ls. 85. Mich. 29 & 30 Eliz. C. B. Zouch v. Bannielf, cited 3 Rep. 88. in the case of fines. M. 5. C. A. issue in tail is priory; because if the fine be ered to him by a rent or a way of error, which he could not have, if he was not privy. And 171. S. C. arg. cites 10 H. 8. 6.

Stat. 31 Eliz. c. 2. Enact, That all fines with proclamations to be levied in the Common Pleas, shall be proclamed four times only, viz. one in the term in which it is ingredied, and one in every of the three terms bolden next after the same ingriend; and every fine so proclamed shall be of force, as if the fame had been sixteen times proclamed according to the statute heretofore made.

If the conuice dies, the heir hath election to have the fines with proclamations, as well as the ancestor. For it's for his benefit, and the statute does not refrain it. And the reason of 8 Eliz. 254. why the proclamations were tried after the conuice's death, was, because a fomedan was depending, and that was only in the dierection of the court. C. G. 693. Mich. 41 & 42 Eliz. B. R. Wakfeld v. Higlone.

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. Papb. 63. in cafe of Harry v. Farce.

The proclamations serve only to distinguish, that it is a proclamations to the King in 4 H. 7, for though the issue having notice by the proclamations brings his fomedan accordingly, yet it shall not avail him. 3 Rep. 91. Pocci.

44 Eliz. in cafe of fines.

Where a fine, and five years past, are urged to bar a right, & if, by non-claim within the statutes, he must forfeit the proclamations under seal; and the chirographer's mentioning that 'tis a fine with proclamations, as is usual, will not ferre. Clat. 51. 13 Car. Allen's cafe.

A fine with proclamations when given in evidence, ought to have the proclamations indentured on it; and 'tis not enough to say that it is from the Common fflatuts, Held on the 25th of May, 1712. by Sir R. 2 Obsou. 126. p. 125. Tim. 32 Car. 2. R. Ausl.

32 H. 8. cap. 36. (initiated, For the expiation of the statute of fines) fett. 1. Enacts, That all fines levied before the juries (viz. of the Common place) with proclamations, are void; and the statute, (viz. 4 H. 7. c. 23) by persons of full age, of lands before the fine levied in any wife intuiled to the perfon levy the fine, or to any ancestor of the fame perfon, shall be, after the fine levied, ingrossed, and proclamations made, a bar against the persons and their heirs claiming the lands levied, by force of such a fine, and against all other persons claiming the fame to their use, or to the use of any heir of any of the bodies of them.

Sect. 2. Provided, that this act shall not bar any perfon, 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 such woman in dower, for term of life, or in tail.

§ 4. That the statute do not extend to any fine levied of lands, the owners whereof, by any express words in any act of parliament made since the 4 H. 7. are restrained from making any alienations.

Sect. 4. Provided, that this act shall not extend to any fine to be levied by any person of any lands, before the levying of such fines, if the proponent should prove, of the name, 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 act is properly a statute, nor do fines receive any strength or virtue by it; but it is only a confirmation of 4 H. 7. and whereas this statute continues 4 H. 7. to extend to fines levied by tenant in tail, the eftate 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 Periam J. L. 76. Mich. 29 & 30 Eliz. C. B. in the case of Zouch v. Bannielf.

Sect. 1. By perfon of full age before the fine levied) IV. desined lands to f. when he should come to the age of 25 years 25. after 21, and before 25 years, levies a fine with proclamations, and he has issued M. and died; and the question was, Whether the estate-tail in futes, and contingencies, at the time of the fine levied, was barred or not; and it was resolved that it was, and yet the conuor had but a mere possibility, to have the estate, at the time of the fine levied, and though he was not foled by force of the fine, at that time, yet by force of the words (before the fine levied in any wise intuiled) an estate-tail in futes is comprehended; but no judgment was entered. Per Warner J. 10 Rep. 50. in Lampl's cafe, Citens Hill. 29 El. Ket. 814. Graner's cafe. Raym. 150. & C. cited. Pigafher in the conuor is not requisite to the fine, but to bar a bar of an estate-tail. By the words of the statute, a fine doth bar the intail in many cases, where the conuor cannot give the land, because he has it not. Per Hobart Ch. 1. H. 258. Mich. 16 fosc. in the case of Duncombe H. 8. Reginald, a conuice.

Tenant in tail dissamines and disfranchises the disseminates, and levies a fine, with proclamations to A. for connexana dita come esse, & c. and takes an estate in fee by render, in the same fine. The disseminates, before all the proclamations are made, claims, and after the proclamations pass, and be ingredied one year after by the tenant in tail dies seized; and by all the juries 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. Acheb. 210. b. pl. 17. Tim. 4 Eliz. Ausl.

A. before this statute gave lands in tail, remainder to the King in fee; tenant in tail had issue three daughters; one of the daughters, in Queen Elizabeth's time, levies a fine of her part with proclamations, and they are barred during her life, and she dies without issue; and it was adjudged, that this fine by force of this statute barred the daughters, and that he is not entitled to the fine; and by all the juries 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. Acheb. 210. b. pl. 17. Tim. 4 Eliz. Ausl.

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Tenant in tail and his heirs male, the reversion being in the King, suffers a common recovery, or levies a fine, and by the opinion of the judges, the less is barred, though it be made contrary to the statute, and the statute, and the rev's of the judgment; and Eggesfield said, that he had known this case, and the cafe was held by good advice to be a bar; but Story doubted. D. 32. a. 11. It was resolved, that if tenant in tail, of the gift of the King, levies a fine, and suffers a recovery of the estate-tail, it is lawful to recover the King for money grants in tail, per Curia-tre. Hille and Richardson. Ibid. in marg. cites Hill. 5 Co. 1, Cor. C. of Nottingham v. Le Monjo.

Pac., 28. H. 8. Fine levied by tenant in tail, the reversion in the crown, bound the fine by 4 H. 7., and the 32 H. 8, provides, according to this case, shall not extend to fines levied by tenant in tail, the reversion in the crown; but that the same shall be lawful, as force, as they should have been, if that act had not been made, which amended not their case. Whereupon in Staffor's cafe, the judges devised to help that fip, by a very oblique and irregular method, and the same was held, whereby it was provided, that no common recovery in that case should bind the fine, but that he might enter after the death of tenant in tail; the said recovery, or any thing done or suffered by or against such tenant in tail, to the contrary notwithstanding the 8. H. 8. Staffor's case and Noy's cafe. Per Hobart. H. 328. 533. Mich. 16 Joc. 1st in Maccullulam's cafe. Sot. 125.

A point intended for a special verdict, whether, a non-claim for five years after the fine should bar the fine that omitted to claim, so as to bind him for his life, tho' it would be no bar to his issue. But the jury found a claim by him, and fo the point came not in question. See Sid. 160. Lloyd v. Pollard, and 1 Ed. 620. S. C. and cites C. E. 595. where 'tis the opinion of some of the judges, that fuch fine so levied by difliver, &c. halft bar the tail, and that it is causa smutis out of the statute, and to that of the jury is bound the fine in tail. But the parties agreed. Ex. 210. Parker v. Ponder. The Lord Keeper's opinion was, that howsoever 4 H. 7. was, at the making thereof, as to barring, or not barring an estate-tail; yet when 32 H. 7. comes, and declares upon 4 H. 7. now all fines are good from 4 H. 7. to bar estate-tail. Sot. 92. Hill. 35 Co. 2. B. R. in cafe of Pollard v. Lloyd.

A. A woman, tenant for life, remainder to B. in tail. A. levies a fine, and her husband levied a fine to B. the remainder-man, and took back, by render, a rentcharge; A. and B. died, and the issue in tail enters, and by the opinion of the judges, the grant and render by the said fine is out of this statute, and shall bind the issue in tail. But the parties agreed. Ex. 210. Parker v. Ponder. The Lord Keeper's opinion was, that howsoever 4 H. 7. was, at the making thereof, as to barring, or not barring an estate-tail; yet when 32 H. 7. comes, and declares upon 4 H. 7. now all fines are good from 4 H. 7. to bar estate-tail. Sot. 92. Hill. 35 Co. 2. B. R. in case Pollard v. Lloyd.

So in the tail, [5 later patents] In two cases this statute seems to weaken the statute of 4 H. 7. in the case of fine by tenant in tail, by act of parliament, and tenant with rev's in the crown. Per Hobart Ch. J. Hob. 331. Mich. 10 Joc. 1st in Maccullulam's cafe. 7.

Vol. 11, p. 75.

FIN

If tenant in tail levies a fine, and dies before the proclamations are past, though a right really defends to the issue, there is no bar but that act which was made contrary to the statute, yet after the proclamations the intail is barred; for the proclamations distinguish the fines which bar the intail from those at Common law, which only discontinue it; and by the express words of 32 H. 8. all fines levied with proclamations of any lands intailed to the person for life, the tenant in tail, making the intail to any of his ancestors, shall immediately after the proclamation be adjudged a sufficient bar against the said person and his heirs, claiming only by force of the intail. 3 Co. 86. Plow. 437. 437. 2 And. 177. 66 Mar. 618.

He was adjudged, that where A. was tenant for life, remained to B. in tail, and B. levied a fine, and died before all the proclamations were past, his issue being out of the realm, that after the proclamations were past, though the issue, immediately upon his return into the kingdom, made his claim to the remainder, yet it availed him nothing, but the fine was a final bar to him. 3 Co. 87. cafe of fine.

So it is if there be grandfather, father, and son; and the grandfather being tenant in tail, confers the father, and afterwards discharges him, and then levies a fine with proclamations to his son, but before the proclamations were all past the son died, and after they were all past the conuene entered, and the son got the cause, he found it was lawful to recover the fine, and the fine brings his formado; the conuene placed the fine with proclamations, and the demandant thereupon the entry of his father's, but could recover nothing; because after the proclamations past, the fine was a good bar to the intail, which was made to the grandfather who levied the fine. C. E. 597. 3 Co. 87. It was this:

And the law is the same in case of actions brought, as of an entry made to preserve the intail; for if tenant in tail levies a fine, and dies before the proclamations are past, and the issue in tail brings a formado, the conuene may plead the fine with proclamations, though he was made pending the writ. 3 Co. 95. Plow. 437.

And this has been carried so far, that though a particular tenant, who is a stranger to the tenant in tail, should enter before the proclamations are past, to preserve his own right, yet the intail is barred; as if A. tenant for life, remainder to B. in tail, remainder to C. in fee, and B. discharges A. and levies 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 case, neither the estate of A. nor C. is affected by the fine, yet after the proclamations are past, the intail is barred from the proclamations made, and can any part of the issue preserve it. C. E. 610. P. 65. 66.

As tenant in tail may convey his whole estate by the fine, so may he have any lesser estate out of it, which shall likewise bind the issue at his death; as if there be A. tenant for life, remainder to B. in tail, and B. agrees to make a lease for years to J. S. upon writ of covenant brought by B. against J. S. he may levy a fine crown ore, &c. to B. and J. S. may render them to J. S. for the term agreed on, with reversion of a rent; and this shall continue in force against the issue, because when J. S. conveys the fine, because he has real right, the tenant in tail, as he was a tenant in tail and the intail of the land continuing, no incumbrance of the donee can affect the land in the tenant in tail.

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; this
If a tenant 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 paes without any action brought by the heir, yet he shall either, during his minority, recover the land notwithstanding the five years lapsed, 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 intestate 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 was fruitless and unnecessary to pursue them; as if a man levies a fine of land out of which he has 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.

If tenant in tail be defeised, and the diffelee levies a fine, the diffelee has five years to make his claim by the first faving, because he is the fift who has a right at the time of the fine levied; and if he omits to make his claim in that time, the fine is bound for ever. 3 Co. 87. Cro. Eliz. 86d. C. Lit. 372. Though the statutes 4 Hen. 7, and 32 Hen. 8, have made the operation of fines stronger against parties and privies than they were at Common law, for by them the fine in tail is bound, though not in remainder or reversion; yet have they enlarged the privilege that strangers had at Common law to avoid them, for upon these statutes 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 accrue; 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. Ab. 532.

If tenant in tail bargains and sells his lands, or difenfions the tail, and the bargaine or difenfionee levies a fine, the fifth five years pafs in the life of the tenant in tail, yet the iflee shall have five years after his death to avoid the fine; for his father having given all his right by the fale, could not claim any right against his own gift; the iflee therefore is helped by the fcond faving, because he is the fift to which a claim by faving should be made, and the fine levied. 2 Bac. Ab. 532.

If a mortgagee be defeised, 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 fcond faving in the act, because his title did not accrue till the payment of the money. 2 Bac. Ab. 519.

If an infant diffelee be defeised, or makes a feoffment, and the feelee or diffelee levies a fine, and five years pafs, the first diffelee is barred of his right by the first faving in the act, because he has a present right, which he ought to purfue immediately by action or entry; but the infant defeised have 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. Ab. 532.

A. held of Black-Acre in fee is defeised by B. who levies a fine after the death of the life A. ares 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 devifent of fuch right was an infant; and the question was, whether A. and G. having affered five years after the fine levied to pass during his ares, and the fine is good; but the child, for making a claim, 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 perfon and their heirs, other than parties to the fine, the right, claims and interest as they have in lands and tenements whereof a fine is levied, that they pursue fuch right by way of action or lawful entry within five years. Now A. having a right to Black-Acre at the time the fine was levied, consequently he and his heirs must be comprehended in this faving, but then they cannot take the benefit of fuch continuation unless they perform the condition of levying again an action in the faid faving, which they apparently neglected to do, for 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 fuch right must be barred and extinguished; and G. in this cafe shall have no privilege of instance, because the statute extends that only in cafes where the right fift attached in the infancy, and therefore shall have five years after his infancy to make his claim; but here the right was fift in A. at the time of the fine, and the statute allows but five years to pursue the right from that time it accrues, which was not done in this case. Plow. 350 to 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 paes without any action brought by the heir, yet he shall either, during his minority, recover the land notwithstanding the five years lapsed, 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.

A. leaves to B. for years, to commence after a former lease in effe; the first lease is determined, and before any entry is made thereunto, another lease is made to A., who levies a fine, and five years paes 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 repect of the word interfich, which a term for years may properly be called. 5 Co. 124 Ch. 1. Cro. Jac. 61. 5 Co. 124 a.

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 life A. was a remainder, the second lease shall have five years after the first lease is determined, because his right then first accrued. 1 Leon. 99. 2 Leon. 157. Cro. Jac. 61. 5 Co. 124 a.

As if a man settles lands to the use of himself for life, and that he should make a jointure to his wife, and a lease for life to his son, leaving the same to the son also for life; and then the tenant should make the sale, which was not touchèd by the fine; besides, this being an interfich termini, the leflee had no right till after the death of the leflee, consequently must have five years from
FIN
from the accruit of his right to prefer it. 1 Hard. 410, 143.

A coyptholder may be barred by a fine and nonclaim, because it is an interest within the statute; so executor, 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. 2 Dea. 241, 242; 1 Dea. 224. You may be ruled in Chancery, that where A. devises lands to B. in tail, remainder to C. in tail, subject to the payment of legacies; and C. levies a fine, and five years passes without any claim, that the legacies are not barred by the fine; for C. having no title but under the will, the purchaser may be presumed to have noticed thereof, and legacies thereby bequeathed. 2 Fern. 662.

If there be tenant by elevit, statute-merchant or staple, and a fine levied of those lands, and five years passes 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 I. 517. 5 Co. 124. 4. Plow. 374. So it is if an inquisition upon an elevit be found, and then a fine be levied of the lands, and five years passes without any claim, the interest of the tenant is barred, because after the inquisition found, he has had his release of the whole estate, his interest is barred, and may have a decree of ejectment or trespasse, and therefore their interest may be displaced, and consequently their right barred. 1 I. 217.

But if a man have a judgment for a debt at Common law, a fine shall be levied, or by a tenant in tail, or a copyhold, or in remainder, unless by fine, and five years passes, the plaintiff may still have a fieri facias and an elevit; so it is of a conoufee of a statute before execution used; for tho' the judgment and execution be incumbrances that are chargeable upon the elevit, yet before execution sued, the conoufee, as he has no right to the land, his release of all his life, 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 first accrues. 1 I. 127. So if a man have a decree in Chancery to charge lands, and the tenant in tail, after the death of the first, and five years passes, yet the plaintiff may have execution, because 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. Cof. 268.

If levee for years be oublé, and be in reversion disfiefled, and the disfrifee levies a fine, this and five years nonclaim shall bar both, because the leeree for years may have his ejectment, and the leeree his alfife. 9 Co. 105. But if levee for life be disfiefled, the reversioner shall have five years after the death of the particular tenant, but for the first five years he has no action to recover the freehold. 9 Co. 105, 5. Co. Litt. 269. Plow. 374.

If levee for life or years makes a refund and levies a fine, and five years passes without entry or claim by the reversee and then the levee dies, the reversee has five years to preserve his right, because he has two different rights in the same entry; for he has a lease in the land, and the land itself. He being one immediately accrueth by the act of the leeree in committing the forfeiture; the other upon the death of the levee or expiration of the term, and therefore shall not forfeit the left by omitting to take advantage of the first; wherefore if the reversee omits to enter upon the breach of the condition in law, yet his old estate, which accrueth upon the death of the levee, or expiration of the term, still continuing, is found by the statute, which prefers future rights, as well as those in f. a. 1 I. 241. 3 Ke. 371, 372. Raym. 216. Mod. 71. 3 Co. Eliz. 235. 3 Co. 78. 3 Co. Litt. 157. But if tenant in tail die before the levies be taken, it never expires, and then levies a fine with proclamations, and dies without issue, and five years passes 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 as good but five years from thence to prefer it. 3 Co. Litt. 156.

If there be tenant for life, the remainder to B. in tail, and the leeree to F. being out of the realm; if B. dies beyond seas, the If. is in tail, the levies shal take effect when he pleases for that clause of the 4 H. 7, which gives permons out of the realm, intimates, &c. and their heirs, five years after their impediments removed, to pursue his right, cannot be extended to this case, because B. being out of the realm to make him, the clause limits five years to him and his heirs after his return, which now is become impedible. 2 I. 519.

A coyptholder of a dean and chapter levied a fine with proclamations, and five years pass without any claim by him that was in the dean and chapter, yet the exceeding dean was not bound by the fine; because if that were allowed, the statute of 1 & 2 Eliz. would be of little use to refrain alienations; for then by combination between the dean and tenant, all lands belonging to the chapter might be aliened. 1 I. 317.

If levee for years affigns his term in trust for himself, and afterwards purchases the inheritance, and occupies the land, and then levies a fine, and five years passes without claim by the assignee, the term is lost, for neither the eofuit que trus, nor the termor, have any remedy, nor the eofuit que truus, because he by the fine hath acquiesced in the title of the conoufee, and it were unreasonable to allow him any pretensions after fol levis a conoufee 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; for it is if it in fee-simple makes lease for a hundred years to attend the inheritance in trust for himself, and shall continue in possession, and makes a lease for fifty years, and levies a fine for conseuace de droit to confirm it, and five years pass without any claim by the first lease, his interest is barred, and he has no interest by fine; for the second lease, and the fine devolved the first term out of the lease, and consequently if there be no claim by him in five years, his interest must be barred. Cro. Cas. 110. 1 Lea. 270. 1 Sid. 478. 1 Part. 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 inheritance has an assignment of the term in trust for himself, though the termor makes no aim in five years; yet the term continues, because the statute of fines being made for the security of the purchasers, they would weaken the interest, if fines deferred such leases against the intention of all parties, 1 Sid. 460. 1 Part. 82. 1 Lea. 272.

Thus if a man mortgages his land, and, as is usual, still continues in possession, and levies a fine, and five years passes, yet the mortgagee is not barred; for though the mortgage 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 estate, and it is less than a fraud, which the law will not countenance. 1 Part. 82. 1 Lea. 272. So if the mortgagee is in possession, and levies a fine, and the five years passes, yet upon payment of the money he may enter. 1 Fern. 132, and there laid to be a new way of foreclosure the equity of redemption; but the argument is of another case.

Thus it hath been adjudged, where a man was leeree for a part of one part of a tenant, and tenant at will of another, rendering rent, and the leeree 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 tenant's right, but to make a visibly a fraud and trick in the first levee; with which his leexe realises a fine, and the leeree had no reason to make his claim while the rent was duly paid him. 3 Co. 77.

It is agreed on all lands, that a fine and non-claim will bar a rent, because the eofuit que truus has an equitable interest, and therefore ought to pursue it by proper remedies.
remedies to secure it; yet this must be understood with the following restrictions. 1 Chon. Cofa 268. 2 Chron. Cofa 247.

1. Where the purchaser has notice of the truth, tho' the truftee convey to him by fine, and five years pass without any claim by the cefuis que trul, yet the truth is not barred, because where the purchaser has notice, he feeds the title of the vendor, and where he has to convey by evemy the land from him, shall be presumed to hold it in the same 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 truth is undifurbed, and cefuis que trul's interefte no way affected by the fine.

2. Though the truftee should convey by fine to a pur- chaser, who had no notice, and the fine, and five years non-claim, the cefuis que trul should be barred, yet if the purchaser should recover to the truftee, the bar from the reconveyance ceases, and the truth as to him revives again for he that was originally involved with a truth shall never be allowed to plead his own tortious act in his own justification; for that were to allow a man to plead his crime in his own defence, and excufe of his treachery. 2 Chron. Cofa 241, 5. 6. 1 Vern. 60, 5. C.

If lands are devoted to truftees till debts paid, and then to an infant; and they seize, and after in truth for D, and the heirs of his body, and in default of heirs of body of D, remainder to C and his heirs; The recovery of D, barred the remainder to C, as being a remainder of a truth, for a remainder of a legal ef- fect cannot be barred by the recovery of a cefuis que trul only. Atkin's Rep. 473.

6. B. by procuring in a marriage fettlement, gives his wife a power to dispose of 100l. by will to such person as the flall appoint, to be paid to the wite within one year after his death, and in default of such payment, if M. is impowered to make a lease of particular lands to rafe this fund; the wite makes an approbation of the 100l. but not the bar; the heirs of the husband mortgaged the effeate to E, who then had no notice of this power: Afterwards, on B's purchafing the effeate, the heirs of the husband levy a fine to him, and convey the equity of redemption as a collate- ral security, who then had notice of the power; five years incarcel after levying of the fine, and no claim made on the part of the appronees of the 100l. but they now bring their bill to be paid this sum. Lord Chancel- lor Hardwicke held, that the plaintiffs were intitled to the 100l. and interefte from the end of one year after the death of Anne Brickley the wife of T. B. Atkin's Rep. 477.

A bare naked power is not barred by any of the fla- tures of fines, otherwise as to an interref terminal. At- kin's Rep. 476.

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

If a man has only a right of action, and his entry be taken away, there is claim or actual entry on the land will not bar, right, or avoid the fine; because though he has a right to the land, yet since he has not pursued it in the manner the law has prescribed, 'tis as ineffectual as if he had been quiet. 2 Bac. Abr. 539.

A man that has a right of entry may empower another to enter for him, and such entry is sufficient to avoid a fine; for what another does by my command or direction, is looked upon to be my own act. Mer. 459.

But where a man enters in my name, and without my direction; this does not avoid the fine, or preserve any right, because the statute prefers my right only in case I pursue it by entry, &c. In such a case, if a stranger enters in my name, and without my direction; in my act, and consequently cannot avoid the fine; yet in this case, 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 libe- rality in the event of a probable claim is equivalent to my command, and therefore the act of another by my direction is my own. Poph. 108. Co. Lit. 245.

Lesse for life levies a fine come eas, &c. and he in re- version, five years after his death, brought his ejecmpt, and a stranger by his direction delivered a declaration in ejecemption to the tenant in possession; yet this was al- judged no entry to avoid the fine. 1 Med. 10. 1 Sum. 319. 1 Vern. 45.

If an action be brought to recover lands, of which a fine was levied, and the defendant discontemns, this is no claim to avoid the fine, because the discontinuance flows from the want of the demandant to prefer his right. Dalifon 116, 107. 1 Vern. 45.

By the 4 & 5 Ann. (the act for the amendment of the laws) 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 proclaima- tions, or to be barred by a batter of title, or a court of chancery shall be commenced within o-5 year after next making such entry or claim, and prosecuted with effect.

Device 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 if either of them die without issue, then to the survivor and an adventure, A. and B. make partition, and D. levies a fine and suffer a recovery, and dies without issue. The entry of A. is taken away, and no title accrues by survivorship. Stran. 12.

There must be an actual entry to avoid a fine, and the demesne 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 intituled to the land, where of the fine was levied; the approbation of the court, and the present tenant, unless the demandant can make out a clear title, poiffession always carrying with it the pre- sumption of a good title till the right owner appears be- sides, where the plaintif 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 fuppofes to be done, that it should be erroneous; and therefore it is no less than tri- fling with the courts of juftice, to feek relief when he can't make appear he has received any injury. 1 Roll. Abr. 747. Dyer 90. 3 Lev. 36.

But if there be several parties to an erroneous fine, they shall have a right to the certainty that is to enjoy the land, tho' themselves can have nothing. 1 Roll. Abr. 747. 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 juftice, being things of the greatest credit, can't be questioned but by matters of equal no- toriety with themselves; wherefore tho' the matter affigned for error should be proved by witneffes of the bed credit, yet the judges would not admit of it. 1 Roll. Abr. 757.

And hence it is, that in a writ of error to reverse a fine, the plaintif can't affigne to the difficulties of the record of the dudium potestates, because that contradicts the record of the conveyance taken by the commissioners, which evidently fiews that the conveyor was then alive, because they took his conveyance after they were armed with the conveyance and the dudium iudicis. Dyer 89. 8.

1 Roll. Abr. 757. Gr. Ediz. 469.

4 But
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But the plaintiff in error may say, that after the con-

nunance taken, and before the certificate thereof returned, the con

on died; because this is consistent with the re-

The defendants on this ground would maintain, as former, &c. but here it did not appear, that Sir Herbert Purves

know he was under age, and therefore the court

not then being judicially before the court. See Eliz. 468.

If the conununance be taken before commissioners in pais, the

plaintiff can't affirm for error, that the conon died before the re-

turn of the writ of covenant, for it would directly contradict the

record, because the conunion in court is never made till the writ of covenant be returned; the

plaintiff的设计 till then not being judicially before the court. See Eliz. 468.

If the conununance be taken before commissioners in pais, the

plaintiff can't affirm for error, that the conoon died before the re-

turn of the writ of covenant, for the demunus was directed to Sir R. M. he being after the con-

uance made a knight, who returned the demunus with his name and title; and this was affigned for error,

that the person that took the conunion was not the same

who was directed to make the return; but it was not allowed, be-

cause it contradicted the record, which is that the de-

munus was directed to Sir R. M. and that Sir R. M.

vriute thereof took the conununance. Tel. 33. 1 Roll. Abr. 757.

If a demunus be awarded to two, and one only takes the con-

uance of the fine, this may be affirmed for error; be-

cause where one of the commissioners only certifies the

conuance, the assignment does not contradict the record;

but in this case, if the fine had afterwards been drawn up

as a fine acknowledged in court, there the erroneous con-

uance taken upon the demunus shall not be affirmed for error,

that it shall be taken as a fine acknowledged in court only, and no averment of the fine shall be

admitted to disprove the record. See Eliz. 240. Tel. 34.

If a fine is acknowledged before commissioners in the coun-

try, and the conuunace dies before the term; though no writ of covenant was fiend out, or

King's fibers entred, the court will permit the conumone to

enter the fine, as of the term preceding. Lord Raym. 850.

If one of my name leaves a fine of my land, I may

avoid this fine by strewing the frencal matter; as to say,

that there are two of my name, one of Sale, and the other

of Dale, and one of Sale, and the other

not I, who am of Dale; for this is consistent with the

record, because I will admit that one of my name lefled the


12 Co. 123.

No man can have a writ of error to reverse a fine that
took any effect by it. 5 Co. 39.

One Parrot married A, who had an estate of inheri-

tance of a considerable value, and whilft he was under age he prevailed on her to levy a fine with him of this

deeds, the uo whereof were declared to him and her,

and the heirs of them and his, the two bodiments to the heirs

of the survivor; this fine was taken in the country by

virtue of a demunus posthumum to Sir Herbert Parrot, his

father, and an ignorant carpenter; after which the wife died without issue, and now her heir at law proved the

relief of the court; upon examination it did appear, that

Sir Herbert did exact the woman, whose wife he desired

willing to levy the fine, and said her husband and her,

whether she were of age or not, and both answered that

she was; and now her heir moved, that this fine might be

fet aside, and a fine imposed upon the commissioners for

levy, that the plaintiff in error to reverse a fine before the age of one 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 by habeas corpus, and inspect her,

and set aside the fine upon motion; for perhaps the husband

would not bring or proceed for the said writ of error; and the court were of opinion, that it

was the duty of commissioners to inform themselves of the

state age, and that a voluntary ignorance would not

Vol. II. No. 75.

FIN

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 benefit of the court,) he is in it, as another, &c.

but here it did not appear, that Sir Herbert Purves

knew she was under age, and therefore the court

would not fine him. 2 Fin. 30. 1 Madi. 245. S. C.

12 Co. 121. 1 Roll. Rep. 113, 114. S. C. 12 Co. 123.

12 Co. 124.

A having inveigled his wife to levy a fine of her land to him when the lay on her death bed, pretending, as was

fugled, he was to have it for his life; and a demunus

was sent into the county to take the fine, and the cap-

tion was taken the very day she died; and because the

fine would be void if the party being dead before the

King's fiber was paid, the same was directed in the

tale, and made to bear due ten days back-

ward, and all the other parts of the fine were rafed like-

wise, and made to correspond with it, and the King's

fiber was paid, and to all appeared on the record to have

been done before the death of the woman; only it it

bought in the court of Chancery to have the fine set

aside, or to have a reconvenance, it was held by the court,

that though Chancery ought to relieve as much against

a fine obtained by fraud or prize, as any other kind

of conununance, yet that such relief was not by decreing a

writ of vacut of one under age; but for any error in the fine, or irregularity, or ill practice

in the commisioners, it was a matter properly cognizable in that court where the fine was levied, and for

which that court may reverse the fine; but there being no proof of fraud or prize in this case, the bill was dismiff.

Abdy, Cales in Equity 258.

Husband and wife, the wife being but sixteen years of

age, levied a fine, which was taken by virtue of a de-
munus, and they being brought into the court of C. B. by

having their complaint taken as a fine; for a complaint of

the remainder-man, a court was entered of the fire good-natured woman, and the court directed the

remainder-man to prosecute an information against him who took the capunance of the fine. 3 Lef. 36.

The manner of revering fines differs from the method

obtained in revering other judgments; for in all other
cases, where the suit is adversary, the record itself is

removed; but in case of a fine the transcript thereof is re-

moved; for where the suit 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

contradiction of the parties; and therefore are no monuments of the law. The suit of Dyer, who had the

claim of the remainder-man, was to take the fine if the

woman, and the court directed the

remainder-man to prosecute an information against him who took the capunance of the fine. Lord Coke says, a fine levied in C. B. is voidable by

writ of error. 1 Roll. Abr. 752. 2 N. B. 20. 1

Berndt. 51. Dyer 89. 1 Roll. Abr. 753. Co. Read. 12,

1 Salk. 337.

It an instant brings a writ of error to reverse a fine for

his non-age, and his non-age, after injunction, is rec-

orded by the court; but before the fine reveres he

levied another fine to another to another, this second fine shall hinder him from revering the first; because the second having

intensely barred him of any right to the land must also de-

fer the other fine; and as it applies to this case, it would require to the land. 1 Roll. Abr. 788.

But if tenant in tail levies an erroneous fine with pro-

clamations, and then levies a fecond fine, which is also

erroneous, and dies; if the sile in tail brings a writ of

error, the second fine, of which the heir might need to the dower, or the heir of the demunus, plaid in

bar the second; for though there be error in the first

fine, yet till that appears judicially to the court, it must be

looked upon as a fine duly levied, and consequently a

bar to the plaintiff, because while the second lands 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-

iff may reply upon the first writ of error, that the fe-

cond
and second 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 can't 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, can be pleaded in bar of the writ of error, quo non volet excepto ilius ret. enim pcturum definiatur. Ravn. 461. 1 Vent. 353. 2 Sid. 92, 93. 2 Jon. 181. Cro. Jac. 333. 1 Rol. Rep. 36. 2 Bulk. 244. 2 Inf. 518.

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 disability of the infant shall not render the contract of the tenant for life, who was of full age, ineffectual. 1 Leon. 115. 315. 1 Vent. 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. Cor. 415. 1 Rol. Abr. 797.

A writ of covenant to levy a fine ran thus, Præc. A. gallus, pro codex altæfmissæ pro deo strætis, dem. Gardenis, and the dedimus patronizet to the writ of covenant, but the præc. which was drawn up with the concord, was de duobus strægibus pro duobus strætis; but this was no error, because where the concord was pursuant to the dedimus and the writ of covenant, the præc. which forms to be a copy of the writ of covenant on paper, is more than is needful, and therefore no material error. Cro. Test. 77. 1 Rol. Abr. 794.

If the commissioners upon a dedimus return thus, The execution of this commissioun appears in a certain panel to this commissioun annexed, which is the usual form in a certain field, yet this is no error to avoid the fine, for whatever return certifies the compentence to be duly taken by the commissioners, is sufficient; and therefore if the commissioners certify the compentence under their seals, without any words, it is well enough; so if the return had been made the concord was patent in loco avusia. Cro. Test. 77. 79. 1 Rol. Abr. 794.

If a fine be levied, but the proclamations thereon 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 discontinuance. Dyer 218, 182. Highl. Abr. 938.

The court will not reverse a fine without a jura faciis returned against the tenants; for the conuices are but nominal perfections; and tho' it was otherwise in the precedent in Co. Eliz. and Horn's Plead. 375. and the law perhaps does not strictly define it, yet the course of the court does. 1 Bell. 339.

Fines may be avoided where they are obtained by fraud, covin or deceit, tho' there be no error in the process; and that may be done either by writ of deceit or aver民航, making thus the fraud or covin in the Eliz. 47. 121.

Thus if a fine be levied of land in ancient demesne, the lord shall have a writ of deceit against the conuice and the tenant, and by that the fine is void. F. N. B. 93. n. Also 6.

If a fine be levied to secur ues to receive a purchaser, and the conuice 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 lets it aside for the covin and fraud committed in obtaining it. 3 Co. 80. a. Pleaw. 45. 6.

So if a fine be levied upon an unavowed conditional, 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 ulterior contracts to be supported by the

A AND the agreement is such, as will, that the afferfed A. Cecilia and J. have acknowledged the afferfed tenements, with the appurtenances, to be the right of the said David, as those which the said David hath by the gift of the afferfed A. Cecilia and J. and their heirs have been re-united and quitclaim, from and to the afferfed D. and his heirs ever. And further, the fame A. Cecilia and J. have granted, for themselves and their heirs, to the afferfed D. and his heirs, the afferfed tenements, with the appurtenances, against all men for ever. And further, the quittance, warranty, fine, and agreement, the said D. hath given the said A. Cecilia and J. two hundred pounds sterling.

1. A writ of covenant, or precedent.

G EORGE the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the faith, and so forth; 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, a hundred acres of pasture, one hundred acres of wood, with the appurtenances, in Dale; and unless they fail to do, and if the said D. shall give you surety of performing his claim, then furnish by good flanksmen the said A. Cecilia, and J. that they appear before our justices of Wellmington, to be sworn to the oath of St. Michael in one month, to appear wherefore they have not done it: And have you there the flanksmen and this writ. Witness yourself at Wellmington, the day of in the year of our reign.

Sheriff's return. Pledges of profession. Sheriff A.

Sumomationes of the within-named Abraham, Cecilia, and John.

2. The licence to agree.

Norfolk. D. E. esquire, gives to the Lord the King to wit, that he hath, for the sum of 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, fifty acres of wood, with the appurtenances in Dale.

3. The concord.
FIN

which the said D. hath of the gift of the aforesaid A. Cecilia and J. and they have renounced and quitted claim, 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, quit-claim, warrants, 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. T HIS is the final agreement, made in the court of the Lord the King at Westminister, from the day of Saint Michael in one month, in the 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 fo forth, before the Right Honourable Charles Lord Camden, Lord Chief Justice and Justice, and other faithful subjects of the Lord the King then there present, between D. E. Esquire, complainer, and 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, wherein upon a plea of covert tenure and squatter in the same, declared to be, that the aforesaid A. Cecilia, and J. have acknowledged the aforesaid tenements, with the appurtenances, to be of the right of the said David, as those which the said D. hath of the gift of the said A. Cecilia, and J. and that they have renounced and quit-claime, 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, quit-claim, warrants, 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 legato de tenementum quo sit duce antiquo dominico, is a writ to the justices for the disposal of a fine, levied of land held in ancient demesne to the prejudice of the lord. Reg. Orig. fol. 422.

Fine rapinendo 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 favour 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 factum, (from the French affilectum, signifyng sometimes crassly, sometimes artificial or exact, and the substantive factus, in Latin acta,) Signifieth an absolute necessity or condition D. and B. when a man is constrained to do that which he can no way avoid, we say, he doth it de facto, and in this sense it is used, Old Nat. Brev. fol. 78, and in the statute 35 Hen. 8. c. 12; and in Perkins, Dow 321. In Abbott and Woodland's cafe, Black. ch. 94. And in Eyton's cafe, cited in Eyton's case, Ca. 6 Rep. fol. 111. G. Colv., edit. 1728.

Fine levando de tenantum terris de Regio in Episcopio, is a writ directed to the justices of the Common Pleas, whereby to licence them to admit of a fine for sale of lands held in capite, Reg. Orig. fol. 167.


Fine non rapinendo pro pertinentibus planitando, is a writ to inhibit persons 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 stat. 1 Ed. 3. c. 12. But see where they are taken away, 12 Car. 2. c. 24. 1, 6.

Fines for offences, In this, the same, is added, pecuniary punishment, or recompense for an offence committed against the King and his laws, or against the Lord of a manor: In which case a man is fined fines, fo-cere de transfusione cum rege, &c., Reg. Jud. 1. 25. 2. Colv. 2.

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 c., and the corporal punishment, which was only in terraeus, changed into the pecuniary, whereby they found their own advantage. This begat the distinction between the greater and the lesser offences; for in the criminal major there was at least a fine to the King, which was levied by a capitaneus; but upon the lesser offences there was only an amercement, which was affe aser, and for which a disfranges, or an action of debt only lay. 2 Boc. Abr. 502.

1. Who have sufficient authority to fine and amerci, and for what offences.

2. In what actions or proceedings there ought to be a fine or amercement.

3. When, 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 amerci, and for what offences.

Reguly all courts of record may fine and imprison an offender, if the nature of the offence be such as deferves such punishment. 8 Ca. 29. Dall. 400. But no court, unless of record, can fine or imprison. 11 Ca. 43. b. Gals. 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 Salt. 200.

The sheriff 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 plaintiff refusing to make a peace, &c. or upon a person neglecting to make his preface, or upon one of the jury refusing to present the articles whereof they are charged, or upon a person duly charged or constable refusing to be sworn. 2 Yog. 142. 8 Ca. 38.

Also the steward of a court-leet may by recognizance bind any person to the peace who shall make an essay in his presence, fitting the court, or may commit him to ward, either for want of furies, or by way of punishment, without demanding any furies of him; in which case he may afterwards impose a fine according to
FIN


Also the sheriff in his sworn, and to the heir of aeward of a court, have a discretionary power, either to award a fine or apprehension for contempt to the courts: as for a sutler's refusing to be sworn, &c. and the award of a court-let may either amerce or fine an offender, upon an indictment for an offence not capital, within his jurisdic-
dition, without any law or proceeding or trial; so that the court may way enormous, as an allay accom-
panied with wounding. Kilh. 66. Kilcchein 43. 11.

It is said, 'that some courts may imprison but not fine, as the confables at the petit feiffoun. 11 Co. 44. 1 Declaration 74. 1 Co. 43. 2.

Also some courts cannot fine or imprison, but 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. 2.

Every court of record may impinge 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 or on a formal prosecution, but also on all such as shall be guilty of any contempt in the face of the court, and so as to require an oppressive language to the judge, or obstinately refusing to do their duty as officers of the court. 11 H. 6. 17. 3. 1 Rol. Atw. 219. 8 Co. 38. 11 Co. 43. C. Est. Eliz. 581. 1 Sid. 145. 8.

If any of the jury give their verdict to the court, before, forsooth and delivered of their verdict, they may be fined. 20 10. 16.

It time out of mind a confable hath yearly been elected, and presented by the jurat at a let, and f. S. by them is elected and preferred confable, and being in court, and by the sheriff required to take his oath accordingly, refused and departs in contempt of the court, the sheriff may impose a fine on him. 8 Co. 38. b. Grieffy's cafe. Sav. 93.

So that a thiefmaison refuse to make a prejudgment in a let, the sheriff may impose a reasonal fine on him. 8 Co. 38. b.

So if one of the jurat in a let departs without giving his verdict, he shall be fined by the sheriff. 8 Co. 38. b.

If one is present when a murder is done, and does not his beft endeavour to apprehend the murderer, he shall be fined and imprisoned. 3 10b. 53. 2.

So if two are fighting, and 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 a justice-let, held within a fines, a man makes a csr, this is not properly, but be fined. 4 10b. 267. 7.

If a dead body in prision, or other place, whenupon an inquest ought to be taken, be interred, or suffered to lie so long, that it putrefy before the coroner hath viewed it, the gaoler or township shall be amerced. 1 Co. 27. 8. 2 Hawk. P. C. 30.

If any homicide be committed, or dangerous wound given, whether with or without malice, or even by mis-
adventure, or self-defence, in any town, or in the lanes or fields thereof, in the day-time, and the offender escapes, the town shall be amerced; and if out of a town, the hundred shall be amerced. 3 10b. 53. 4 10b. 493. 

Gr. Rec. 182. 2 Lem. 267. 2 Rol. 215. 1 1786. 10.

Also since the statute of Winchester, cap. 5. ordinad, that walled towns shall be kept by his from fun-fitting or fun-riling; if the felk open in any such town by night or by day, or the offender escapse, the town shall be amerced, 8 Co. 6. 8.

If, by the forest law, hue and cry is made for a trefpafs in venation, the township or village within the forset, which does not follow the hue and cry, shall be amerced at the judicio-feift. 4 10b. 264.

If the defiant ought to pay a rent to the let, pro capit late, this is not properly, but be fined, a fine in groats, and if they do not pay it, they may be amerced, for this is due and payable at the let. 13 H. 4. 9. 1 Rol. Atw. 212.

A man shall not be amerced in a let for a trefpafs to the lord himself, for he shall not be his own judge. 12 H. 4. 8. 1 Lem. 242. 2.

If a man要把 another in London, coming to the Common Pleas, to affirm a writ at the suit of the same man, because he ought to have his privilege, the plaint-
iff shall be fined for the contempt of the court. 6 Co. 65. 1 Rol. Atw. 218. S. C. 8 Co. 60. S. C. cited.

So if the plaintiff, in a suit in hance, be arraigned at the suit of the defendant in London, before the return of the writ in hance, this is a contempt to the court; and for this he shall be fined and imprisoned. 11 H. 33. 1 Rol. Atw. 218. S. C. Where one under countenance of law is guilty of a double vexation; as if he files in H. and pending this, files in London for the same cause, he shall be fined. 8 Co. 60. a. Goulf. 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 pu-
dished for his refusal, and that the plaintiff should not be exempted, and suffer judgment against him, and sit in misericordia pro falsi
camer. 8 Co. 39. F. N. B. 75.

Hence when the plaintiff takes out a writ, the sheriff, before the return of it, is obliged to take pledges of pro-
tection, which, when fines and amercements were con-
venient for a stiffener, the plaintiff shall not be exempted, and suffer judgment against him, and sit in misericordia, without affilling any sum in certain, which was afterwards afforded by the coroners in the pro-
count, but if it were in an action of trefpafs, the court for the fine, and levied it by a capiflg. 8 Co. 60. 1 Rol. Atw. 212. 219. C. Est. Eliz. 844. 8 Co. 16.

And therefore in all actions there vi et armis, as reforc, trefpafs, &c. the defendant shall be fined. 8 Co. 59. 1 Rol. Atw. 219.

So in a writ of reception in the Common Pleas, if judgment be given against the defendant, he shall be fined and imprisoned; but in a writ of reception in the county-court, if the defendant be convicted, he shall only be amerced. 8 Co. 41. a. 66. b. 11 Co. 43. F. N. B. 73.

In a real action, so in an assait against him who re-
covers in the first action, if the plaintiff recover, the defendant shall be amerced, 1 Rol. Atw. 212.

If a man recovers in an affite, and dies, and his wife is endorsed, in an attaint against the wife, if he recovers, the wife shall be amerced. 40 10b. 20. 1 Rol. Atw. 212.

In an action upon the statue of Marlborough, for dri-
ving a defi infringing another county; the defendant shall be ransomed, (which admits that he shall be fined,) 30 10b. 52. 1 Rol. Atw. 327.

In an affite of rent, if the tenant be found guilty of a diffiain 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. Atw. 219.

In all judicial writ, if the plaintiff is barred, nonuit, or his cause must be rejected, he shall be amerced, be-
cause the process is founded upon a record. 8 Co. 64. a.

But as fines and amercements in those actions, not being levied, became matter of form, it was thought hard, that for any irregularity herein, a judgment should be arraigned; and therefore by the 16 & 17 Car. 2. cap. 8. it is enacted, "That no judgment, or convi-
sion by rognat affiliation, or nihil verification, shall 

be
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 dower, &c. and if the tenant says, that he hath aliens by dower; upon which judgment is given, and the demandant shall recover against the tenant, &c., the vouchee shall be in misericordia, tho' he hath counter-pled the warranty. 12 Ed. 3. 14. 1 Rol. Atr. 212.

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 demandant shall be amended. Co. Lit. 127. 8 Co. 61. 1 Rol. Atr. 219.

In an action brought by two, if the writ abates by the death of one of them, the other shall not be amended, because it is by the act of God, without the default of the party. 41 Ant. 18. 43 Ed. 3. 23. Co. Lit. 127. 1 Rol. Atr. 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 amended, because this is not his fault. 47 Atk. 3. 61 Co. 76.

If one defendant or plaintiff is nonsuit in such action, wherein summons and severance lies, and the other proceeds therein, he that is nonsuit shall not be amended. 8 Co. 61. a.

It seems to be a general rule, that if part is found for the demandant, or plaintiff, and part against him, he shall be amended. 8 Co. 61. a.

As if in action of covenant, for several covenants broke, if the plaintiff be barred for one, he shall be amended for this, though he recovers for the other. 1 Rol. Atr. 216. 1 Rol. Rep. 411. S. C.

So in an action, upon the cause, upon a promissory to do two things, failing to pay so much for certain land, and, if the vender fails it again for more than he pays, to pay so much more; and the defendant pleads in bar relief, which is adjudged no bar for part (fellicit for the last sum) 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 the former for which he might have acknowledged himself satisfied of that which he had released. 1 Rol. Atr. 216. 1 Rol. Rep. 411.

If the plaintiff declares, that he was oppossed of an hoy, floating at anchor in the river Thames, loaded with goods, and that the defendant fells a ship in the river, to negligently govern his said ship, that he is in pradidp navidum of the plaintiff violenter ruphat, & illum frigid & submerfit; and upon Not guilty pleaded the jury find, that quid negligentem gubernationem navis pravit, defend. per quod in navidum gravissim violenter ruphat, & illum frigid & submerfit, the defendant is guilty; & quod refluxam premittamus, that he is Not guilty; the plaintiff shall not be amended, for there is no refudinum, and the first part of the verdict comprehends all the injury complained of in the declaration. Hard. 295.

In an action of waste in demibis & gardens, if upon the writ of a servant, the defendant be found guilty in demibis, and Not guilty in gardens, the plaintiff shall be in misericordia for the garden. 14 Ed. 3. 453. S. C.

In trespass 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 amended for this. 1 Rol. Atr. 212.
FIN

Aff. 70. 1 Roll. Abr. 217. S. C. M. 522. S. P. D. V. 89. pl. 111. Like point.

If in debt upon the statute of H. 8. for buying of tithes, the plaintiff demands 5s. for the value of the land, and the jury find the value but 10s. the plaintiff shall have judgment, &c. but shall be amerced quod the refusal of 5s. 2 & Elia. 257.

But in trespass, or other actions where the plaintiff declares ad damnum, if he's be found than he declared for, yet the plaintiff shall be amerced, because the action is founded upon an uncertainty. Cro. Elia. 257. per curiam.

In reprieve, if the defendant avows the taking of two several disfratile, for several caues, and issue is joined upon the taking of one disfratil, and found for the plaintiff, and a ville prescript entered as to the other, the plaintiff shall not be amerced. 2 Sid. 136. per curiam.

3. Whio, in respect of their process, are not to be fined or amerced; and whoe a fine ought to be awarded, and not an amercement.

The King being plaintiff or defendant shall not be amerced, nor shall the Queen confer. Co. Lit. 127. 8 Co. 61. F. N. B. 31. 3 Bull. 276.

An infant being plaintiff or defendant shall not be amerced, and this is the reason he shall find no pleged. Co. Lit. 127. 8 Co. 61. Palmer. 518. 1 Roll. Abr. 214. 225.

But if an infant defendant shall be amerced, if he pleads with the defendant, and the matter is found against him; but he shall be pardoned of course. 1 Roll. Abr. 214. Cro. Elia. 410.

But if an infant brings an action by his procure alone, and pending the action comes of full age, and makes an attorney, and after is found not, he shall be amerced. Dyer 335. pl. 41.

If an infant brings an action of trespass by guardian against two, and the defendants plead Not guilty, and at the nisi prius the plaintiff appears in person, and a verdict is found for the plaintiff, and Not guilty for the refl, and one of the defendants Not guilty; and judgment is given for the plaintiff, for that for which the verdict is given for him, & quod nihil cepit per illum for the refl, and him that is found Not guilty; sed nihil de mifericordia pro falsis clamatis. E. g. qui quosque tempore transacto, vel postea non iustius infra veniam retractavit; yet this is good, and no error. 1 Roll. Abr. 214.

If a processe is brought against an infant, and pending the plea he comes of full age, he shall be amerced for the delay after he comes of full age. 5 Co. 49. Abr. 394.

If a be voched in the right of the feme, and judgament against them, and the feme is to be amerced, they the feme be within age, the husband being of full age. 16 Ed. 3. 14. 1 Roll. Abr. 14.

In an action upon the fæco against baron and feme for fraudulent words spake by the feme, and judgment is given against both, as well the husband as the wife shall be amerced. Hob. 127.

In an action of trever and conversion against baron and feme, for the covert in of the feme during the coverture, if the feme be found guilty by verdict, and the baron not guilty, yet both shall be in mifericordia; for the amercement is not for the coverture, but for the delay of the suit, and the non-rending the fifth day, of which the baron is as well guilty as the feme. 1 Roll. Abr. 215. Co. Lit. 439. 440. 1 Roll. Rep. 293. 3 Roll. 154. 8 Co. 61.

In a writ of dower, if the tenant vouchers the baron and feme as in right of the feme, as heir to the husband of the defendant, and the voucher demand the lien, upon which the lien is thrown, and they enter into warranty, that those who have nothing by defight; and the tenant fays that they have by defect, upon which judgment is given against the tenant, &c. the feme only shall be amerced without the baron. 1 Roll. Abr. 215. 6.

FIN

If a feme covert facces a general appeal of the death of her husband, known by her to be alive, she shall be fined. 185. App. 234. 3 H. 4. 17. pl. 2.

In an affide against baron and feme, if the feme be received upon the default of the baron, and pleads in bar, and the baron does not appear, and the defendant takes issue upon the bar, and this is found for the defendant, the tenant shall not be imprisoned, for this cofferion of an outfl, because she is a feme covert. 37 Aff. 1.

1 Roll. Abr. 220.

It may be granted to be found a diffdier with force in an affide, the judgment against him shall be quod capiat. 1 Roll. Abr. 220.

So 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 quod capiat. 1 Roll. Jer. 220, 221.

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, contemptts, or disturbances committed in factes 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. 180.

A man shall be fined and imprisoned for all contemptts done to any court of record, against the commandment of the King's writ under the Great seal, as in a quare imprius done in the course of any committt, attachment upon a prohibition, &c. 8 Co. 60.

But when the defendant or plaintiff, tenant or defendant se retraces, or receiveth in contemplation 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. Co. Lit. 221.

If in reprieve, the defendant claims property fallly; and this in a proprietate probanda is found against him, he shall be fined and imprisoned. 8 Co. 60. a.

If a man denies a recovery or other record to which he is entitled, he 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 habetur tale recordam. 8 Co. 60. a.

In an affide, if the tenant be attainted of a delfinant with force, he shall be imprisoned. 1 Roll. Abr. 222.

But if an affide and a rent-feck, if the affide be found a delfinant only, the judgment shall not be quod capiat, but only in mifericordia. 1 Roll. Abr. 223.

Also in an affide of rent charge against several tenants; if it be found the plaintiff distrained for this, and one of the defendants, without consent of the refl, made a receif, that one or more of the other tenants are defect; then they shall not be imprisoned, but only he who made the receif. 39 Aff. 4. pl. 4. 1 Roll. Abr. 223.

In an affide, if the tenant by his plea does not deny the outfl, though he be found a delfinant without force, yet he shall be imprisoned. 28 Aff. 15. 1 Roll. Abr. 222. 8 Co. 61.

In an affide of nuisance, if the defendant be found guilty, he shall be imprisoned. 19 Aff. 6. 1 Roll. Abr. 222. 8 Co. 61. 1 Roll. Abr. 222. 8 Co. 61.

Addio in all actions quare vi et armis, as recefo, trepass, &c. the defendant shall be fined; yet in actions of trespass upon the fæco, if the defendant be found guilty, the judgment shall not be quod capiat, but quod fit in mifericordia. 8 Co. 59. b. 1 Roll. Abr. 222. 8 Co. 59. Hob. 180.

But in trepos, if the plaintiff declares that he levied a plante in an affide and upon process f. S. was arrested by a fefiant, and that the defendant vi et armis refused him, per quod he left his debt; and upon Not guilty plaide, it is found for the plaintiff; the judgment here- upon ought to be quod desiderat capiat; for tho' the nature of the action is properly an action upon the fæco, as those who have nothing by defight; and yet this being with force to the fefiant, who was a minifter as well to the plaintiff as to the court, the action may be vi et armis. Hob. 180. 1 Roll. Abr. 222. 8 Co. 61.
FIN

If a man denies his own deed, and this is found against him by verdict, he shall be imprisoned for his felony and trouble to the jury. 1 Roll. Abr. 220, 224. 2 Bull. 230. S. P.

But in a man, where his own deed is pleaded against him, pleas non est factum, and after the nisi prius, or before verdict, ridicule veritable cognosco this to be his deed, he shall not be imprisoned, but only amerced. See Co. 60. 1 Roll. Abr. 224. 2 Rol. Litt. 42. 3 Rol. Rep. 45. No. 4. 4 Co. 3. 4. Dyer 67. 5. Rom. 202.

1 Mid. 73. 2 Sand. 189. 8. Kib. 678, 688, 694.

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 felony, because he could not know, whether this was his deed or not, being made to his ancestor. 28 Att. 80. 1 Rol. Abr. 224.

In trespass contra poenam, for tampering his corn; if it be found that the cattell of the defendant escaped, but not contra poenam, and tampered the corn; yet the defendant shall be imprisoned, for he ought to keep his cattell at his peril. 77 sess. 56. 1 Rol. Abr. 224. 3 C. S.

In an action upon the case, upon an offer of it, if the defendant be found guilty, the judgment shall not be good capiator, but good fit in misericordia. 1 Rol. Abr. 223.

In a suit of decease against the party who recovered in a real action, and the sheriff, if it be found that no summons was made, he that recovered before shall be imprisoned. 1 Rol. Abr. 224. 8 Co. 59. S. P.

In all c.c. where a thing is relented by any flatus, the defendant shall be fined and imprisoned. 8 Co. 60. 4 C. J. 92. 831.

As in an action upon the statute of Marylebone for driving a dirtsfill out of the county, the defendant being found guilty shall be imprisoned. 30 Att. 38. 1 Rol. Abr. 224.

In an action of debt upon the statute of 1 & 2 Pb. & Ma. of dirtsfills, upon which the defendant shall forfeit to the party grievous, for the driving a dirtsfill out of the hundred 5 l. and treble damages; if the defendant be found guilty, the judgment shall be good capiator. 1 Rol. 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 good capiator, because he took it contrary to the provision of the statute. 1 Rol. Abr. 223.

So in an action to recover damages done to a tenement of the statute of 2 Ed. 6. for not setting forth of titles, if judgment be given for the plaintiff, the judgment shall be good fit in misericordia, and not good capiator; because this is but a debt given in recompence of titles; and this is the usual course. 2 Rol. Abr. 223. 1 Sid. 233.

So in an action for a robbery founded upon the statute of Winchester, if the defendants are found guilty, the judgment shall be good fit in misericordia; because this action is not founded upon any male-feasance, but upon a non-feasance only. 4 C. J. 350.

In a suit for thefts, for an affault and battery; if the battery was done before a general pardon, by which the fine is pardoned, yet the judgment shall be entered good capiator; for the court need not take conscience thereof without demand. 4 C. J. 38.

4. Of mitigating or aggravating fines; of moderating or effecting amercements; and of the manner of restoring fines or amercements.

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 judge, who proportion such fine so as to make it adequate to the offence, from the consideration of the bafefulness and enormity, and dangerous tendency of it, the malice, deliberation and willfulness, with which it was committed, the age, quality, and degree of the offenders. 2 Hawk. P. C. 445.

If a profecutor accepts costs from the defendant, he cannot, by the rule 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 satisfaction of the wrongs after which he is receivable for to harrase the defendant. 1 Saft. 55.

But as to those costs given by 5 & 6 H. 11. M., on the removing a caufe by certiorari, the profecutor 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 Hawk. P. C. 292. 2 Saft. 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. 2 C. Litt. 265. 3 C. Cae. 251. 6. Rom. 376.

If a person is indicted and found guilty of a great nuisance, and a writ goes to the sheriff to abuse it; if the party refuses to abuse it at his own charge, the court will raise the fine accordingly; but, if the nuisance may be easily removed, as pulling down a wall, &c. Comb. 90. Upon a motion to the fines, that every one a confession of the indictment, which was for an affault; Hilt. Ch. J. took a difference, where a man confesseys an indictment, and where it is fit; in the first case, a man may produce affidavits to prove for affaull upon the profecutor, in mitigation of the fine; otherwise the defendant is found guilty; for no entry upon a confession is only one entendre cum Domino Rey., & petit se in gravitatem causas. 1 Saft. 55.

If an accordive fine is imposed at the sefions, it may be mitigated at the King's Bench. 1 Kent. 339.

The court may make a fine, but cannot award any corporal punishment against the defendant, unless he be actually present in court. 1 Saft. 56. 422. Comb. 36. 77.

Before the statutes of Magna Charta, and H. 2. 1. cap. 6, the lords used to set such excessive and grievous amercements or other severe sentences upon persons for such grievous amercements they used to seize the whole profits of the tenements which they had granted: To prevent this oppression, and to take away all fines and amercements at the will and pleasure of the lord and his reward, and likewise all excessive fines and amercements, if they were never so certain, to statutes against, that every one an amercement should be altered; so that the court or homage do award an amercement, yet it is to be suffered by the afforers, who are so called, because they suffer or bring in the quantity of the amercement. 8 Co. 39. 2 Inst. 77.

These amercements are to be with a falsus tenementum, and were always held too grievous and excessive, if they deprived the offender of the means of his livelihood; as if he were a fackman, and the amercement extended to take away the beasts 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 merchandize, if he were a vaillein, 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, sparing to him his contentment; and all the rest, Likewise if a merchant, or any other; and other than small shall be likewise amerced, sparing his wainage, if he fall into our mercy. 2 Inst. 27. 28. 8 Co. 39.

But a fine may be set without affaullment, for the statute of Magna Charta does not extend to those causes, where a court of record may impound, and so a fine is set by way of mercy, as a random and purgation of the offence; for the statute was designed to mercy to the offenders, and not to hinder them from mercy. ao. fo did not extend to offenders that might be punct by imprisonment. 8 Co. 38. 2 Inst. 77. 11 Co. 43. Kelso. 65. 3 Co. Eliz. 581. Dall. Sheriff 470.

If at a court-baron, according to the custom there afe, a by-law is made, and the penalty of 20 l. laid upon every offender, and at another court a tenant is presented for a breach thereof, by which the said penalty is forfeited;
FIN

foiled; this cannot be suffered. 1 Mer 75, pl. 203.
3 Lew. 7, 8. Pi. 159. S. C. adjudged.

On the pretenent of a nuisance in a torn or leet, the diftrif of the county either amerce the party, and also order him to remove it by such a day, under a certain sum, or may order him to remove it, under such a pain, without amerceing him at all; the party having notice of such order shall forfeit the pain, on a pretenent at another court, that he hath not removed the nuisance, without any further proceeding; and every pain so forfeit may be recovered in like manner as a fine or amercement by deftreft, or action of debt; neither shall it be afeord to left fum than at first fet. 1 Lew. 203.

Kiichin 51, 52. 1 Red. Ab. 498. Cr. fac. 382. 2 Red. Ab. 135. 1 Red. Rep. 201. Allen 78. 3 Lew. 7, 8. 5 Mot. 130. 1 Sail. 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 afferoers, choven and sworn for that purpose; and therefore if an amercement be imposed in a court-leet, and suffered by the jury, and not by sworn afferoers for that purpose, it is a void amercement, and the lord of the court cannot maintain his afeion for it. 8 Co. 40. b. 3 Lew. 206.

Although by the express words of Magna Charta, Comites & barones non amerciabunt vixit per partem, &c. yet long usage hath prevailed against it, for the amercement of the nobility is reduced to a certainty, viz. a Duke 100, a Marquis 50, Earl 20, a Bishop who hath a Barony 5 l. &c.
2 Inst. 26. 6 Co. 54. 8 Co. 40. a. S. C.

In an afflaff, if the plaintiff does not appear, nor any for him, yet three of the afflaff may be sworn to afeer the amercement, and shall do it. 28 Af. 26. 1 Red. Ab. 203.

In treafra, if the defendant, as bailiff, &c. jufifies, for that the afflaff was prefent, &c. and fets forth, that the amercement was afeord by two afferoers, he ought to fhew their names. Kite. 66.

By the Common lawn, the King or Lord may, at their election, diftribute, or bring a prefion of debt for a fine or amercement. Cr. Elit. 881. Sawil 93. Red. Ent. 151, 553, 606. 2 H. 4. 24. 10 H. 6. 7. Royom. 68.

But every avowry or declaration of this kind ought expressly to fhew, that the offeone was committed within in the jurisdiction of the court, that if it were not, all the proceedings were coram non juicio, and a court shall not be prefumed to have a jurisdiction where it doth not appear to have one. Hob. 129. Red. Ent. 553. Co. Ent. 572.

Alo it is admissable to allodge, that the offeone was committed as well as preffen, and to fhew the names of the prefentors and the afferoers in fettin preffen a preffenment or afeerment, and also to fhew that proper notice was given of holding the court. But for this, vide Howk. P. C. 59, 60.

Of common right, a diftrees is incident to every fine and amercement, in a torn or leet for offences of right within the jurisdiction thereof; but if the offeone were only the neglect of a duty created by culmof, and of a private nature, it is clear, that there must be a culmof to warrant a diftrees, and perhaps such culmof is also neceffary, though the duty be of a publick nature. 2 Howk. P. C. 60.

Also the flerrif or lord may for fuch fines or amercements diftrain the goods of the offeone, even in the highway, or in land not holden of the lord, unlefs fuch land be in the poiffession of the crown. 1 Red. Ab. 670. 2 Red. Ab. 104.

But fuch fines and amercements being for a personal offece, no stranger's busts can lawfully be diftrained for them, tho' they have been levant and couphant upon the lands of the offeone. Owen 146. Noy 20.

If fuch court is in the King's hands, the diftrees may be fo ordered, either after it hath been kept for a reaflonable time, as the space of sixteen days; and it feme the better opinion, that where any fuch court is in the hands of a common perfon, if the goods were diftrained for an offece of a publick nature, they may be

FIR

foledged, by lawful dircfion for any fuch fine or amercement without a fpecial warrant for doing, which muft be fet forth by him in an evidence or publication of fuch a diftrees. Cr. Eliz. 696. 574. Mer. 574. pl. 789. 607. pl. 839. 2 Red. 173. Sail. 158.

See 2 Bac. Abr. tit. Fines and Amercaments.

Firrte, To fires, or pat a fire upon fome property—

Impredamentum calii give viamen non beneficium pro me maritandi, & fons capitular ad opus domini regis, Roger Hoveden, pag. 783. Firrte is also the fame with fium focius in Brampton, pag. 1105. Quando Rex Scutum cum domino regis favet, &c. and in Hoveden, pag. 783.

Firttse, Dantis, fo called, because vires humar morte. Fings of gold and filver, are thoſe that expel and repel those metals from other corpses, by fire and water. Ann 4 Hen. 7, cap. 2. They are also in the fame place called porters, sometimes defoilers.

Firttift, Is mentioned in the laws of Hen. 1, cap. 3, and is the fame with fegs. From the Sax. fex, ini- minit, and the like. For fire and fire's contents.

Fira, A viol, or little bottle. Mat. Parji. 146. In aurato fola cum vinum cohitur acceperit, time omen.

Firrte, See Fétt.

Firttfe, A growing into the army, or taking up arms. 3 Hen. 3, 4. 5 Sax. firs, exercitio, &c. fire, tert.

'Tis one of the offences which properly belongs to the King's determination, qui broughiunt, i. e. a contribution towards building a caflle; brightenam, i. e. towards building a bridge; vel triads epe fruvidet, i. e. not gone into the army. Leg. II. cap. 17.

Firttftinge, A preparation to go into the army; which was another offence immediately under the cognizance of the King. Ibid.

Firttftinge, Furniture for the army. See firf things.

Firtfitfe, See Ferrofa.

Firtfitte, See Firdtlofe.

Firtftfte, A muclt or penalty imposed on military tenants for their default in not appearing in arms, or coming to an expedition. Adutiad deducta milita. LL. Cam. par. 2. ca. 22. See Firdtfte.

Firtftinge, The firs, or military military, Military men, or men worthy to take up arms, or muftrified, or enrolled to appear upon any occasional expedition. Covell. edit. 1727.

Firt. Houses in London to be built with party-walls, &c. 10 Cor. 2. c. 3. feft. 8. 22 Cor. 2. c. 11. f. 6. Directions for preventing fires in London, 6 Ann. c. 31. 7 Ann. c. 31. 8 Ann. c. 31. 9 Ann. c. 31.

Firemen exempt from being imprisoned, 6 Ann. c. 31. f. 2. Penalty on servors firing houses by negligence, 6 Ann. c. 31. feft. 3. Restrictions of boiling turpentine, 7 Ann. c. 17. fett. 11. Stock in fire-.offices taxed, 4 Gen. 3. c. 2. f. 54.

For other matters, vide Arsen. Burning.

Firtftste, Quod fines dilatantes horvi & reporari faci, fegn. & firebires fuper fantes altibres in qualibet hundr. Ila quod tua patria, per illa fegn. quasquefque necefl. fueris, praemotari perfi. &c. Observatio pr vi vigillos obfervatione in bonum publicum Yarmouth. Temp. Ed. 2. Perhaps from the Sax. firstete, a beacon, or a high tower by the fex-sides, whose were continual lights, either to direct failors in the night, or to give warning of the enemy. Covell. edit. 1727.

Firtftste, Significeth an allowance of wood or effe- vers, or military tentaments firtees for the use of the re- nants: Which by the Common law any man may take out of the lands granted to him. Covell. edit. 1727. See Hapdole.

Firoce, Our devou old ancestors had a way of pugilation, or acquitting themselves from any charge or accusation of guilt, by holy appeal as it were to God him- self, and therefore called it Dei judicium, or God's eredal. This was commonly of two forms, fire-ereral, and water- eredal. This fire-ereral, which was the privilege only of freemen, and the better sort of people, was two fold, either
either fitly, by leaping bare-foot and blind-fold over nine pounde-thares red-hot, laid in length at equal dif
cances, which if the defendant puffed unburnt, he was
judged innocent, but if burnt, he was concluded guilty.

Or, finally, By taking a piece of red-hot iron in the
hand, usually of one pound weight, which was called
simplex-redor, or of two pounds, which was duplex, or
of three pounds weight, which was tripexus ardumum.
Cowell, edit. 1727. See Mattronulch.

firmatim, Firmating or holding to firm. The firm-
mary's or farmer's right to the lands and tenements let
to him ad firmam.—Canones firmatim.—fi firmam
status per unius membro a firmam quo firmam
bracis cel camera fidebre tebeatior, 366 foote
firmata. Statuta Eccl, Paulinum, MS. fol. 49. b. Hence auti-
qua farma was the old custumary rent. And affinitans
was formed out, or let for such a certain firm or rent.
Cowell, edit. 1727. See Kennel's Glafury in Ad firmam
done.

firmatim, Firmatimius tempus, doe-feast, as opposed
to buck-feasen.—Et fidebamus quod tempus praejudicit
his computator inter firmam beati Petri ad vincola &
exulationem justitiae causae; et tempus firmatim inter si-
tum S. Martini & Donationis beatæ Mariae. 31 H.
3. Cowell, edit. 1727.

firmatim, A supplying with food: Si cirillium homo
furEuropei firmatimus accedatur per juuis fitum victam
neger. Leg. Ine. c. 34. f. i. occd. of giving viutuals
to forgive. Cowell, edit. 1727.

firmate, A forrection or caflle well fortified; Et
ninio firmatimus Saxum eafi sec firmatibus fuci lex
vixit. Du Fiefne.

firmum, Feorn, food, viutuals, or firmity given
by the lord to entertain his iabouring tenants.—Qutili-
otibus et de debis ferme, consuet. firmatus ad firmam,
& duas hostellias firmam centrali Naturae sacram
Rather perhaps rent paid in customary services.

firmura, Will. de Croif gives to the monks of Bryh
a certain mill cum libam firmura of the dom of it,—
Reg. de Daniis. De Bratbranon diles free firme,
but that is still a hard word. I think it means
free liberty to cut and repair the mill-dam, and to
carry away the foil, &c. Cowell, edit. 1727.

firffruits and tenants. First-fruits (Annautes, pri-
mitia) are the profits of every spiritual living for one
year, given in the first time to the pope, and called
firmata. But by the fl. 26 H. 8. cap. 3. transferred
to the King here in England; for the ordering whereof,
there was a court erected 32 H. 8. cap. 45. But again
dissoned Anne primo Maria, Stat. 2. cap. 15. And since
that time, those gifts be reduced again to the
 crown by the fl. 1 Ed. 4. yet was the court never
reforod, but all matters the ex convers to be handled,
were transferred to the Exchequer. Cowell, edit. 1727.

First-fruits (Annautes, primitia) were the value
of every spiritual living by the year; which the pope,
claiming the same, caused the court of Parliament to
make two to the pope, and called them tenements.

Kirn, as in this ancient precent
of William the Conqueror. W illiamus Rex Anglorum Wil-
liamos de Caenensi, fol. 3. Præcipio tibi ut fasut
venirem Schiram de Hamor, & judicis ejus cognose.
f terra de ibi reedivit firmam monacorum Sancti Bedeoti,
&c. Ex Regest. de Ramsey in face. Land let upad aliam
firmam, i.e. at the rack, for any other rent paid in
silver, not in card or provision for the Lord's house.
See Whitchell.

firmatim, A rent; as in this ancient precent
of William the Conqueror. W illiamus Rex Anglorum Wil-
liamos de Caenensi, fol. 3. Præcipio tibi ut fasut
venirem Schiram de Hamor, & judicis ejus cognose.
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firmam, i.e. at the rack, for any other rent paid in
silver, not in card or provision for the Lord's house.
See Whitchell.

firmatim, Firmating or holding to firm. The firm-
mary's or farmer's right to the lands and tenements let
to him ad firmam.—Canones firmatim.—fi firmam
status per unius membro a firmam quo firmam
bracis cel camera fidebre tebeatior, 366 foote
firmata. Statuta Eccl, Paulinum, MS. fol. 49. b. Hence auti-
qua farma was the old custumary rent. And affinitans
was formed out, or let for such a certain firm or rent.
Cowell, edit. 1727. See Kennel's Glafury in Ad firmam
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Cowell, edit. 1727. See Kennel's Glafury in Ad firmam
done.
aside, and that the twentieth part of the face of the
of the land due therefor should be annually paid to the
bishop of Rome. But this not being the case, the pope
received the land annates to his Exchequer, as that long
remained one of the most considerable parts of his re-
venu. 

Tenth (decima). are the tenth part of the yearly value
of all ecclesiastical livings. 4 Ed. 1. 120, 121.

These tenth the pope (after the example of the high
priest among the Jews, who had of the Levites a tenth
of the tithes) claimed as due to himself by divine
right. And this portion or tribute was by ordinance
yielded to the pope in the 20 Ed. 1. and a valuation then
made of the ecclesiastical livings within this realm, to
the end the pope might know and be answerable of that yearly
reven'je; and so as the ecclesiastical livings chargeable with the
tenth (which was called spiritual) to the pope, were not
chargeable with the temporal tithes or fifteenths
because they were not charged to the other. So as the
tenth of ecclesiastical livings were not yielded to the
pope de jure after the example of the high priest among the
Jews, for then he should have had the tithes of all the
ecclesiastical livings whenever they were acquired, but
he received tithes with that he had got, and never
claimed more; and that he might the better keep and
enjoy that which he had got, the popes did often after
grant the fame for certain terms to divers of the Kings of
England, as by our histories do appear. 2 Ed. 3 Ed. 2.

None shall pay more first-fruits to Rome than usual
in time of general forfeiture, 6 H. 4. c. 1.

First-fruits and tenthub might be paid to Rome,
25 H. 8. c. 20, sed. 3.

Granted to the crown, 26 H. 8. 3.

The manner of collecting the tenth, 26 H. 8. c. 3.

Covenants for farmers to discharge their lefths of first-
fruits made void, 26 H. 8. c. 17.

Bishops certifying defaults to be discharged, 26 H. 8.
c. 2, sed. 15.

None shall be paid for the year for which first-fruits are
paid, 27 H. 8. c. 8.

The remedy for a seccessor who is obliged to pay his
predecessor's tenth, 27 H. 8. c. 8.

The year of the first-fruits shall begin at the avoidance,
28 H. 8. c. 11.

All insurance to be made to the bishop for tenth which he
cannot receive, 32 H. 8. c. 22.

The court of first-fruits ered, 32 H. 8. c. 45.

The bishop of Norwich to collect within his diocese,
32 H. 8. c. 47.

The five new-erected bishops to pay their tithes in the
court of the first-fruits, &c. 34 & 35 H. 8. c. 17.

First-fruits and tithes of united churches to be paid as
before, 37 H. 8. c. 21, sed. 5. 17 Cor. 2. c. 3, sed. 3.

The penalty of an incumbent not paying his tithes,
2 & 3 Ed. 6. c. 20.

Collectors of tithes shall be bound by recognizances,
7 Ed. 6. c. 7.

Bishops to pay over their tithes yearly, 7 Ed. 6. c. 4.

Voil benevoences to be certified, 7 Ed. 6. c. 4, sed. 4.

The tithes given from the crown to godly uses, 2 &
3 P. & M. c. 4.

First-fruits and tithes rehorted to the crown, 1 El.
c. 4.

Small vicarages and patronages discharged of first-fruits,
2 El. c. 4, s. 25.

What proportion shall be paid by the executors of an
incumbent who dies soon after his promotion, 1 Elia.
c. 4, sed. 30.

Grants to the universities, &c. to continue, 1 Elia.
c. 4, sed. 34.

Benefits referred to the dutchy of Lancaster, 1 Elia.
c. 4, sed. 38.

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The statutes which make the lands of receivers unac-
ceptable, extend to the under-collectors of first-fruits and
tithes, 14 El. c. 7.

First-fruits and tithes 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, sed. 4.

One sixth only to be taken for the funeral payments of
first-fruits, 2 & 3 Ann. c. 11, sed. 6.

Small livings discharged of first-fruits, 2 & 3 Ann. c.
24, 6 Ann. c. 27.

Four years allowed to bishops for payment of their
first-fruits, 6 Ann. c. 27, sed. 5.

Bishops to certify the value of livings, 1 Geo. 1. c. 5.

Rules of the corporation to be approved under the
King's sign manual, 1 Geo. 1. c. 10, sed. 3.

Augmented churches to be perpetual benefices, 1 Geo.
c. 10, sed. 4.

The duties given may be exchanged, 1 Geo. 1. c. 10.

A collector of the tithes exalted, and bishops exempted,
1 Geo. 1. c. 10, sed. 13.

First-fruits and other payments out of any ecclesiastical
benefices granted out of the general garden, 2 Geo.
c. 52. sed. 38.

For more learning on this subject, see 12 Vin. Abr.
Gib. Co. and Born's L. r. Title. First-fruits and tithes.

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 Ed. 199.

1. Statutes against fishing in ponds, and other private
fisheries.

2. Statutes concerning the same, and preferring the breed of
fish.

3. Local and other acts relating to fish, and fishermen.

1. Statutes against fishing in ponds, and other private
fisheries.

Stat. 3 Ed. 1. c. 20. If any trespassers in ponds be
taken at the suit of the party, great and large
amends shall be awarded according to the trespasses;
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 trespasses; 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 abide the realm. And if none fine 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 Ed. 100.

Stat. 5 Eliz. c. 21. sed. 7, 6. If any person shall unlaw-
fully break, cut, or destroy any head or dam of a fish-
pond, or shall lawfully 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 assizes or sessions, 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. sed. 6.

Stat. 22 & 23 Cor. 2. c. 25. sed. 7. If any person
shall use any net, angle, hair, noose, troll, or spear; or
shall lay any weirs, pots, fish-hooks, or other engines;
or shall take any fish by any means or device whatsoever,
or the aid other things, in any river, stream, pond, moor,
or other water, without the consent of the lord or owner
of the water; and be thereof convicted by confession,
or oath of any witnesses, before one j u ic e, in one month
after the offence; every such offender in taking or killing
fish, shall pay any sum not exceeding treble damages, and
two to the overfety for the use of the poor, by
diffreets; and for want of diffreets, to be committed to the
hous of correction not exceeding one month, unless he enter into the same one surety to his party injured, not exceeding t.6. never to offend in like manner.

Sect. 8. And the justices may take, cut, and destroy all such angles, spears, hairs, nooses, taws, walks, pots, fish-hooks, nets, or other engines, wherewith such off-
dender shall be apprehended.

Sect. 9. What may be viewed to appeal to the next-
sions, whose determination shall be final, if no title to
any land, royalties, or fishery be therein concerned.

Stat. 4 & 5 Will. & M. c. 23. sect. 5. Whereas di-
vers idle, disorderly, and mean persons, have and keep
such angles, leaw, pikes, and other engines for the taking
and killing of fish out of the ponds, waters, rivers, and
other fisheries, to the damage of the owner thereof;
therefore no person hereafter shall have or keep any net,
angle, leaw, pish, or other engine for the taking of fish;
other than the makers and sellers thereof, and other than
the owner and occupier of a river or fishery; and except
fishermen, and their apprentices lawfully authorized in
navigable rivers. And the owner or occupier of the
river or fishery, and every other person by him appointed,
may seize, detain, and keep to his own use, every net,
angle, leaw, pish, and other engine, which he shall find
used or laid, or in the possession of any person fishing in
any river or fishery, without the consent of the owner
or occupier thereof. And also any person, authorized by
a justice's warrant, may in the day-time search the
houses, outhouses, and other places of any person hereby
punish'd, for other disorderly or offensive offence or
behaviour, or being suspected to have or keep in his custody or possession any net,
angle, leaw, pish, or other engine aforesaid, and seize and keep the same to his own use, or cut or destroy the
same, as things by this act prohibited to be kept by
persons of their degrees.

Stat. 5 Geo. 3. c. 14. (intituled, An act for the more
effectual preservation of fish in fish-ponds and other waters,
&c.) Whereas the several laws in being for the pre-
vention of the fish in rivers, ponds, pools, moats, streams,
and other waters, are by experience found to be ineffec-
tual for discouraging or preventing such disorderly
behaviour as is usually observed from stealing, taking away or destroying the fish therein
laid and preserved; Be it therefore enacted, That in case
any person or persons from and after the first day of June
1765, shall enter into any park or paddock fenced in and
inclined, or into any garden, orchard or yard, adjoining
or belonging to any dwelling-house, in or through which
park or paddock, garden, orchard or yard, any river or
stream of water shall run or be, or wherein shall be any
river, stream, pond, pool, moat, stream, or other water,
and by any ways, means, or device whatsoever, shall
therein have or keep the same, who shall be therein
inferred, in any such river or stream, pond, pool, moat,
stream, or other water aforesaid, without the consent of
the owner or owners thereof; shall be being or aiding in
the stealing, taking, killing or destroying any such fish
as aforesaid; or shall receive or buy any such fish,
knowing the same to be stolen or taken as aforesaid,
and being thereof indicted within fix calendar months
next after such offence or offences shall have been com-
mited, before any judge or justices of good delivery for
the county wherein such park or paddock, garden, orch-
ard, or stream of water shall run or be, shall be be
by verdict, or his or her own confession or confessions,
convicted of any such offence or offences as aforesaid;
the person or persons so convicted shall be transported
for seven years.

Sect. 2. And, for the more easy and speedy apprehen-
ding and convicting of such person or persons as shall
be guilty of any of the offences before mentioned, Be it fur-
ther enacted, &c. That in case any person 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, and shall surrender himself to any one of his
Majesty's justices of the peace in and for the county
where such offence or offences shall have been committed;
or, being apprehended and taken, or in custody for such
offence or offences, or on any other account, and shall
voluntarily make a full confession thereof, and a true dis-
covery, upon oath, of the person or persons who were
or were his accomplice or accomplices in any of the said
offences, so as such accomplice or accomplices may be
apprehended and taken, and shall, on the trial of such ac-
complice or accomplices, give such evidence or evidences,
as shall be sufficient to convict such accomplice or ac-
complices thereof, shall he or they be sentenced for such
commission of such offence or offences, and giving such evidence or evidences aforesaid, shall, by virtue of this act, be pardoned, acquitted, and dis-
charged of and from the offence or offences to by him
convicted as aforesaid.

Sect. 3. And in case any person or persons shall, after
the said first day of June, take, kill, or destroy, or at-
tempt to take, kill, or destroy any fish in any river or
stream, pond, pool, or other water, (not being in any
park or paddock, or in any garden, orchard or yard, ad-
joining or belonging to any dwelling-house, but shall be
in any other inclosed ground, or ditch, or pond of which
shall be private property;) every such person, being lawfully convicted thereof
by the oath of one or more credible witnesses or witnesses,
shall forfeit and pay for every such offence, the sum of
five pounds, to the owner or owners of the fishery of
such river or stream of water, or of such pond, pool, moat,
or other water: And it shall and may be lawfully requir-
ed for any one or more of his Majesty's justices of the
peace of the county, division, riding, or place, where
such last mentioned offence or offences shall be committed,
on appeal made to him or them, upon oath, against
any person or persons, for any such last-mentioned of-
fences or offences, before the justices of the peace of the
county, division, riding, or place concerned, to bring the person or persons so complained of,
before him or them; and, if the person or persons so complained of shall be convicted of any of the said of-
fences last-mentioned, before such justice or justices, or
any other of his Majesty's justices of the same county,
division, riding, or place concerned, by the oath or oaths
of one or more credible witnesses or witnesses, which oath
such justice or justices are hereby authorized to administer,
or by his or their own confession; then, and in such case,
the party so convicted shall, immediately after such convic-
tion, pay the said penalty of five pounds, otherwise
be imprisoned for the offence or offences aforesaid, to
such justice or justices before whom he shall be so con-
 victed, for the use of such person or persons as the fame
is hereby appointed to be forfeited and paid unto; and,
in default thereof, shall be committed by such justice or
justices to the house of correction, for any time not ex-
ceeding six months, unless the money forfeited shall be
sooner paid.

Sect. 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, or
other water, wherein any such offence or offences last-
mentioned shall be committed as aforesaid, to sue and
prosecute 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 effusion, waste, or over,
more than one impertinent 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.

Sect. 5. Provided always, and be it further enacted by
the authority aforesaid, that nothing in this act shall exten-
d, or be construed to extend to subj ect or make lia-
 ble any person or persons to the penalties of this act,
who shall fish, take, or kill, and carry away any fish,
in any river, or stream of water, pond, pool, or other water,
whose fishing or persons or places shall have a just
right or claim to take, kill, or carry away any such
fish.

2. Statutes concerning the fish, and preserving the breed
of fish.

Stat. West. 2. 13 Ed. 1. c. 47. "It is provided, that the waters of the Hamlers, Ouses, Trent, Donc, Arreys, Derevent, Werfe, Nidda, Tyr, Stuèle, Tife, Tine, Eden, and all other waters, (wherein fishons are taken) shall
shall be in defence for taking salmon from the nativity of our Lady unto St. Martin's day. And that like-wise young salmon shall not be taken by nets, nor by other engines at Mid-Pool, from the midst of April unto the nativity of St. John Baptist; and in the places where fresh waters be, there shall be assigned overfenders of this flault, which may be sworn oftentimes fee and inquire of the offenders: And for the first trespass, they shall be punished by burning of their nets and engines: And for the second time, they shall have imprisonment for a quarter of a year: And for the third trespass, they shall be imprisoned a whole year: And as their trespass increaseth, so shall the punishment.

"For the making of this act, fishermen for a little luce did very much harm, by defoying the increafe of salmon by fishing for them in unallowable times, between the beginning of September, and the midst of November; and likewise for young salmon, or salmon netted between the midst of April, and towards the end of June: Against both which provision is made by this act."

2 Inf. 478.

"Shall be in defense."

That is, by this act it is prohibited that salmon, or young salmon, shall be taken between the times mentioned in this act, nor by other engines, by which the cry or the breed of salmon, lampreys, or other fish, may be taken; upon the pain aforesaid.

And the waters of Long, Wyre, Mersey, Ribble, and all other waters in the county of Lancaster shall be put in defense, as to the taking of salmon, from Michaelmas day to the first of November. And other waters in the county of Stafford, where the sea be, there shall be affigned and sworn conservators of this statute, as in the statute of Whit, and they shall punish the offenders after the pain contained in the said statute.

Stat. 13 Rich. 2. cap. 19. Young salmon shall not be taken from the midst of April, till the 24th of June, upon pain in stat. Wtman. 2. cap. 47. And none shall put in the Thames, Humber, Ouse, Trent, nor other waters, nor by other engines, by which the cry or the breed of salmon, lampreys, or other fish, may be taken; upon the pain aforesaid. And the waters of Long, Wyre, Mersey, Ribble, and all other waters in the county of Lancaster shall be put in defense, as to the taking of salmon, from Michaelmas day to the first of November. And other waters in the county of Stafford, where the sea be, there shall be affigned and sworn conservators of this statute, as in the statute of Whit, and they shall punish the offenders after the pain contained in the said statute.

Stat. 17 Rich. 2. cap. 9. The justices of peace of all the counties shall be conservators of the statutes. Wtman. 2. cap. 47, and 13 Rich. 2. cap. 19, and they shall survey all the wares in such rivers, that they be not too strait, for the destruction of fry, but of a reasonable wideness, after the old allife used. And the justices which shall find default against the statutes shall make true punishment, and shall put under-conservators under them, which shall be sworn to like surveying, and punishment without any favour thereof to be showed. And the same justices in their fellions shall inquire, as well of their office, as at the information of the under-conservators, of all trespasses, and defaults against the statutes afterwards called, that shall cause them which be thereof indicted to come before them; and if they be convicted, they shall have imprisonment, and make fine after the discretion of the justices. And if the same shall be at the information of any of the under-conservators, they shall have half the fine. And the mayor or warden of London shall have the conservation of the statutes aforesaid in the Thames, from the bridge of Staines to London, and from thence over the same waters, in the Medway, as far as is granted to the citizens.

Stat. 2 Hen. 6. cap. 15. The flanding of nets and engines called trynks, and all other nets forbidden day and night to pleas, boats, and anchors, over the Thames, and other rivers, shall be hereby defended; and every person that fetteth them, shall forfeit to the King 20s. provided that it shall be lawful to the poffiflers of trynks, if they be of affife, to fift with them in all fatisfiable times, drawing them by hand, as other nets, having to every of the King's people their right in fifting.

Stat. 1 Eliz. 2. cap. 7. fett. 1. No person shall kill any fry or fray of eels, salmon, pike, pickerel, or other fish, in any bloodgate, pipe, tail of mill, wear, or in any ftraits, steam, brooks, rivers fift or freth, or kill any salmon or trouts not in feafon, being keper or flader salmon or trouts.

Stat. 2. No perfon shall kill any pike or pickerel, not being in length ten inches fish and more, or any salmon not in length fourteen inches, nor any trout not in length eight inches, nor any barbel not in length twelve inches.

Stat. 3. No perfon shall fift, or take fish with nets, tramel, keep, wore, creel, or other device, but only with the unallowable nets and instruments aforesaid, and such fish shall be two inches and a half broad, angling excepted.

Stat. 4. In all places where snells, hitches, minnies, bullheads, gudgeons, or eels, have been used to be taken, it shall be lawful only for the taking of snells, &c. to use such nets, lepes, and other devices as have been used, so that such persons using such nets, &c. do not take or destroy any other fish with the said nets contrary to this statute.

Stat. 5. If any person offend contrary to the points aforesaid, such person shall forfeit 20s. and the fish he takes, and the unlawful nets and instruments wherewith such offences shall be done.

Stat. 6. The Lord Admiral and the Mayor of London, and all other persons which have conservation of any rivers or waters, shall have power to inquire of all offences committed contrary to this act, by the oaths of twelve men or more, and to hear and determine the same offences.

Stat. 7. Forfeitures by reason of such conviction shall be to the use of every of the persons, being no body politic, or corporate, nor head of any body politic or corporate, before whom such conviction shall be had; and to the use of every body politic, and corporation, as the same shall have any forfeiture for any offence committed in their conservancies, upon conviction had before the head of any such body politic, or corporation.

Stat. 8. The lord of every leet shall have power to inquire of offences contrary to this statute, by the oath of twelve men, of any offences contrary to this statute; all forfeitures above limited shall be unto the lord of the leet, and shall be levied as amercements for allays committed within such leet.

Stat. 9. If the seaward of the leet do not charge the jury to inquire of offences done within the leet, contrary to this statute, the reward shall forfeit 40s. one moiety of which forfeiture shall be to the Queen, and the other moiety to him that will sue for the same. And if any jury, charged to inquire of offences committed within the precinct of that leet, do willingly conceal and make default in presentment; it shall be lawful to the seaward or bailiff to impanel one other jury, and to inquire of such concealment; and upon every default found and presented, the jurors which did so conceal, shall forfeit 20s. to the lord of the leet, to be levied as aforesaid.

Stat. 10. The justices within their counties, of fry or spawn, be not presented at the leet within one year after the offence committed, the justices of peace in their counties, justices of oyer and terminer, and justices of all offices shall have power to inquire thereof, and to hear and determine the offences contrary to this statute.

Stat. 12. Saving to all persons all right and connection, &c. This act to endure to the next parliament.
3. Local and other statutes relating to fish and fishermen.

The chancellor, &c., shall regulate the sale of stock fish, &c., 31 Ed. 3. ch. 2. c. 3.

Regulations of the fishery at Blackney haven, 31 Ed. 3. ch. 2. c. 1. &c.

None but fishermen to buy nets, &c., in Norfolk, 31 Ed. 3. ch. 3. c. 2.

The fishermen 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 to liberty to sell fish by wholesale or retail, 14 H. 6. c. 6.


Buying fish out of ponds to be punished with three months imprisonment, 31 H. 8. c. 2. sect. 2.

Buying fish upon the sea to sell within the realm, except scurgeon, porpoise, and feal, prohibited, 33 H. 8. c. 2.

The admiralty shall not exact any thing of those that refer to Ireland or New-foundland, 2 & 3 Ed. 6. c. 6.

Sea-fish may be taken and exported freely, 5 El. c. 5.

13 El. c. 11. 12 Car. 2. c. 4. sect. 5.

No herring not well salted to be bought of any stranger, 5 El. c. 5. sect. 6.

Fishermen not to be premeditated mariners, without the authority of the justices of the peace, 5 El. c. 5. sect. 43.

Ships prohibited to anchor in the way of common fishing, 5 El. c. 11.

Foreign-taken fish not to be dried for sale in England, 13 El. c. 11. sect. 6.

For fish not to be imported by strangers to be dried, 13 El. c. 11. sect. 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.

Unlawful nets prohibited in Oxford haven, 27 El. c. 21.

Fish may be exported in ships with crofs falls, 39 El. c. 12.

Vol. II. No. 76.
Salt to be celled duty free for curing fish, 5 Geo. 1, c. 18.
Allwances out of the salt duty for fish exported, 5 Geo. 1, c. 18, sect. 6.
The time of accounting for salt, delivered duty free, for curing fish, afterwards, 8 Geo. 1, c. 1, sect. 9.
Allwances for salt loft in port, 8 Geo. 1, c. 2, sect. 11.
Boaty on fish exported, how payable, 3 Geo. 2, c. 29, sect. 3.
The exemption in 13 & 14 Car. 2, c. 11, sect. 36, confined to fish taken by subject, 9 Geo. 2, c. 33, sect. 3.
Fish market in Westminster established, 22 Geo. 2, c. 49, 29 Geo. 2, c. 39.
False in contracting for fish to be hold by retail, before it is brought to market, 23 Geo. 2, c. 29, sect. 6.
Fishermen, &c. to fell their whole cargo within eight days after their arrival on the coast, 22 Geo. 2, c. 49, sect. 12.
Fish taken with a book may be sold though under size, 23 Geo. 2, c. 49, sect. 21, repealed 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, 24 Geo. 2, c. 24, sect. 11.
On a refusal of the nominal days appointed for the rendezvous of boats, 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 boats, 28 Geo. 2, c. 14, sect. 5.
One hundred pound penalty on still using the herring 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 c. items on importation, 29 Geo. 2, c. 23, sect. 5.
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 clearing 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.
Infectors of fishing vessels appointed, 29 Geo. 2, c. 29.
Fees to the King's factors 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 fisher-men 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 obstrudking 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. 2, c. 45.
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 Flavum pisiforium: 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 on the river bought for fishing there, the defend-ant may justify that the place where Brashtum marit., in quo nonuplaque stabilitas dominii regis habet & habeatur librum pisiforium: I am sure, the soil belongs to the owners of the land on each side; and the soil of the river Thames, is in the King, &c. but the fishing is common to all. 1 Mod. 195. He who is owner of the soil of a private river, hath pisiforium, and he that hath librum pisiforium, hath a property in the fish, and may bring a poissiforium action for them; but communis pisiforium is like the case of all other commons. 2 Salk. 637. One that has a close pond in which there are fish, may call the pond his own, and in an indictment lay there. But he cannot call them as bona et catala, if they be not in trunks. Mod. Ca. 187.

Fishes. See Fish and fishing.

Fishery. See Fish and fishing.

Fishing acts. Old ones for making of paper may be imported duty free, 11 Geo. 1, c. 7, sect. 10.

Fishing. Dr. Stinner, in his Epitomologiae, says, 'in an engine to take fish, but it seems rather to signify the dam or wear in a river, where these engines are laid and used. For garth in the North is hul used for a backside or homestead. Coswell, edit. 1727. 23 Hen. 8. c. 48.

Fishing. The pipe which was put into the cup out of which the communicants sucked the wine. Disiectae cruses, altarium, fissa, &c. fissa, fissa &c. ornamenta in. Flor. Wigorn. Anno 1587.

Fishing. But more rightly foxtins, from the Saxon foxtins, poignis, and foxtins, not that it is a fine laid upon those who shooting and breaking the peace, Coswell, edit. 1727.

Fisheterett, was a famous lawyer in the days of King Henry the Eighth, and was Chief Justice of the Common Pleas. He wrote two books of great reputation, one du Abridgment of the Common Law, another entitled De Nationa Brevium Coswell, edit. 1727.

Flautus. A flet, a flitch, an arrow. Fr. fleche. — Regulaus de Grey tenet Maneriam de Waterhall in Corn. Buckingo per jurisvictionem unam huncunam super unam unam fine feta præ. xx. & unam annum fine cura, & unam annum fine capitis, & unam Dominii Ric. mundiavis. 17 Edw. 3. c. 33.

Flavo. A place covered with standing water: Aqua, &c. in palem domum & in laxum ex flacone dissina condensat. J. Wilt. 1 tum. pag. 269.

Flato. Achatum, with Flavo.

Flato. A flitch, a booke. — Inflammant fletis firenitum magnam sanctuarius fogo & fuculicetis clasps & gaius, cellar, &a per, alia & palutellis. Gratias Deo Verealista. Ier Richardi Regis, cap. 12, lib. 4.


Fleece or Flightwee. (Six. Fyttis, foja, and wore, mitka.) 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, and has bound as a surety there, the debt is cancel-lor, and with licence. Thus Roft. That but quere. Whether it does not rather signify a molt or fine set upon a fugitive, to be restored to the King's peace? Coswell, edit. 1727.

Flett. (Six. Fletis, i. e. a place where the water ebbs and flows, a running water.) A famous pri-son in London, called the fleete, and the name of the river upon whose side it standeth. Camden. 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 happily, Upon debt, when
when men are unable, or unwilling, to satisfy their creditors. Cowell.

Permit confounding themselves debtors to the King when they are not by, how removable to the Fleet, 1 Ric. 2 c. 12.

The warden, under what penalty, not to suffer any prisoner in execution to go at large, 1 Ric. c. 12.

Punishers in the Fleet how to be proceeded against, 13 Car. 2. fl. c. 2. s. 5. 8 & 9 H. 3. c. 27; sect. 17.

What next prisoners are to pays, 8 & 9 H. 3. sect. 17.

The King by letters patent may appoint a warden during the life of Thomas Bambyde, 2 Geo. 2. c. 32; sect. 5.

To be filled up, and the inheritance of it settled 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 Sir warrants, Abbot de Burgo dicit quod clamat annum of vestum & medium tempus per haere vel flama & fleet. Trin. 7 Ed. 3.

Flematrica, (from the Sax. flama, a fugitive or outlaw, and fleet, to kill or slay.) By virtue of this word were claimed Bona flamina, as appears upon a Sir warrant. Temp. Ed. 3. See Kellany's rep. f. 145. b.

Flemestrefte, (Recitatis fumanastricabo, & c. Inex. c. 11. etiam H. 1. c. 10. 12.) Signifies the receiving or releasing a fugitive, or outlaw. Cowell, edit. 1727.


Flemestrefte, Signifies the liberty to challenge the castel or amencitations of your man, a fugitive, Raffal's Exigif, of Words. Fleta writes it two different ways, viz. Flemestrefte and Flemestrefte, and interprets it, Habere castellum fugitivum, lib. 1. cap. 47. See Fleet and Flemestrefte.


Fleta, A flote, a flote, or place where the tide or flood comes up. Cowell, edit. 1727.

Fletiglith. A payment or much excused from him who despoils the army: From the Sax. flite, fugite, and flete, pagum, Cowell, edit. 1727.

Flight. See Fletiglith.

Fletiglith, alias flite, (from the Sax. flite, contention or flight) Significat multum de obstantibus, rixas & jurgia impingit, & cui haec a principio concordant, pertiff in cursu sua essentia de hujusmodi transgressorum; et quod non essent incurit vel detraxit ex curia vestigii, a discutitavit exigens & fisiatit diviitius. Thus Spelman. Filthite, i.e. Quod prior tenet potissima in cursu sua de contentione & convivio hominum forum, & habeat unde amencitation. Ex Reg. Priorat. de Cokesford.

Floodmark. The mark which the sea, at flowing water, and highest tide, makes on the shore. Accordant a cens ordinaries the admirals wrote by their authority in the lieven avant dits tange a cet temps, faire per ches faits soigneuse le mare & far le mare, comme entre le Cademack & auster water-mark. Anderson's Repert, f. 189. Conflable's rep.

Florescere. A kind of cloth so called, brought from Florence bishop; some was called Arrais, Darnais, Cambresick, Gallico, from the places where it was made. It is mentioned in flat. 1 Ric. 3 c. 8.

Florajus, A current piece of English gold. By indenture of the Mint 11 Ed. 3. every pound weight of old English gold was to be coined into fifty Florajus to be current at six shillings a piece, all which made in tale fifteen pounds, or into a proportionable number of half Florajus, or quarter Florajus.

Flonages, A swimming at the top, which we properly called floating, are such things as form on the top of the sea, or other great rivers; the word is used some times in the comminations of water bailiffs.


Flottam. I. When a ship is sunk, or otherwise perished, and the goods float on the sea. 5 Rep. 196. d. b. Flotam, jettam, and jettam, are morsae, termed together; jettam 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 perishes; and jettam 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 other thing that gives birth to other ship, and they find that they may find them again. 5 Rep. 196. b.

The King shall have jettam, jettam, and jettam, when the ship is lost, and the owners of the goods are not 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 jettam. 5 Rep. 196. b.

Foragium. The name with foragia-ete or fire-bate.


Fodder, Or fodder of lead. A weight of lead containing eight pikes, every pike twenty-three stone and a half. In the book of rate a fodder of lead is said to be two thousand pounds weight; at the marts, it is 22 hundred and a half; among the plumbers at London it is 19 hundred and a half. Cowell, edit. 1727.

Fodder, (Sax. fodra, i.e. alimentum.) Any kind of meat for horses or other cattle; in some places fay and straw mingled together is accounted fodder. See Fodage. But among the oldest it is used to signify the meat that the Prince hath, to be provided of, and other meat for his horses, by his subject, in his wars or other expeditions. Histram de vobis Feodali. See Father.


Fodage, Provision, or fodder, or forage, to be paid by cottiers to the King's purveyors. Johannes abbatis S. Edmundo & D. Stephanius, prior & comu. stabat—quod de extillis, mercatorum conventus, exceptis redditiis qui dicitur utendi, et ubendum, & foedus hominum ad hunc dome nomadum. Quod sunt propria aequi regulae, habesque debeat dominio aequi, &c. Ex Cart. S. Edmundo. MS. f. 102.


Fodage, (Fodagium,) Fig. or figs; rank graft not eaten in summer. Leg. Forstir. Sect. cap. 15.

Fodlinh. Was Torus luchi. The land of the vulgar people, who had no estate therein, but held the same under both rents and services as were accustomed or agreed, at the will and pleasure of the Lord the Bore, and it was therefore not put in writing, but accustomed praedium et status. See Spelman of Feuds, cap. 5.

Folmore, or Folmorc. Saxan follicani, that is, canonic populi, compounded of folk, populus, and genre, commercium, libitiges (as Lambard hath in his Explanation of Saxon words) nor were in the courts; one now called The county court, the other The forsett's turn. This word is still in use in the city of London, and denotes Celebrem ex tota civitate conventum. Stow's Survey of London. But Adamson says in his Forsilinse, folde is the court helden in London, wherein all the folk and people of the city did complain of the mayor and aldermen, for misgovernment within the city. Sumner in his Saxon Dictionary says, It is a general assembly of the people, to consider and order matters of the commonwealth. Omnes proceres regis & militis & liberi domonii ....
and force after a fort, and so proceedeth to divers other branches worth the reading, as feract face, seract retaining, unlawful assembly, riots, rebelles, &c.

Cowell, ed. 1737.

Lord Coke says, there is also a force implied in law, as every treasurers, rebels, or disturbers, as it is called, that deserveth force, with weapons, number of persons, &c. where threatening the King and his laws, to the terror of another.

1 Coau 257. By the law any person may enter a tavern; and a landlord may enter his tenant's house to view repairs, &c. But if he that enters a tavern committs any force or violence, or he that enters to view repairs, &c. with a sword, or other weapon, he has been intended, that they entered for that purpose.

3 Rep. 146. All force is against law; and it is lawful to repel force by force:

There is a maxim in our law, Quod alterium jujus et jujus, &c. per se calumniati presentis, tumult, et insurtum.


Seract retaining or holding of possession, is a violent act of repletion by strong hand of men wept with force, or other action of fear in the same place, or offending, whereby the lawful entry of justices, or others, is hindered. High. Synod. part 2. tit. indentures, sect. 65.

Seract entry and tenant. Seract entry (ingratias manum factum jujus) is a violent actual entry into a house or land, &c. or taking of a person, or weapon, whereby he offer violence or force of hurt to the tenant, and whereby he deny [sic] the reversion thereof.

High. Synod. part 2. tit. indentures, sect. 65. Coap. jud. of Peace, sect. 58. &q.; of Law ad 63. It is also used for a writ grounded upon the statute 8 Hen. 6. e. 9. Cowell.

At Common law, if a man had a right of entry in him, it was permitted to enter with force and arms, and to detain his possession by force, where his entry was lawful; this created great inconvenience by arming the tenants of the lords, and in a manner encouraging them in mischief, who were always too forward in rebellions and other contentions in their neighbourhood; also it gave an opportunity to powerful men, under the pretence of feigned titles, forcibly to eject their weaker neighbours.

Dallin's Justice 257, Lamb. 135. Coap. 70 a. b.

It fermeth, that before the troubelome reigne of King Richard II. the Common law permitted any person (which he had) to enter and to take the possession thereof by force, if otherwise he could not have obtained it. For a man may see (in Britten, fol. 115.) that a certain refite of time was given to the defefker, (according to his diligence and defence) in which, it was lawful for him to gather force, arms, and his friends to break up the trespass of his wrongfull entries, at his return at this day, if in a common action, or intimidament of trespass for entering into land) the defendant will make title thereunto; the matter of the force alleged against him will fell altogether upon the validity of his title, as appears in 2 H. 6. 13. and 49. But after the rebellious tumults, and infurrection of the villains, and other, the base commons, which happened the fourth year of the reign of R. 2. the parliament thought it necessary to provide against all such occasions of further sedition, uproar, and breach of the peace.


It seems, that at the Common law, a man disaffierte any lands for reparation, if he could not prevail by fair means, might lawfully regain the possession by force, unless he were put to a necessity to bring his action, by having neglected to re enter in due time: And it seems certain, that even at this day, he who is wrongfully dispossessed of his goods, may justify the retaking of them in like manner by force, if he repute to himself too much to take them; for the violence which happens th'o' the repletion of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought.

1 H. Eire. 157.

But this indulgence of the Common law, in sufferings to remain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial
of a justice of peace; neither doth it give the justice any power to relieve the party to his petition, or to inflict any penalty on the sheriff for disobeying the process, of the justices in the execution of the statute. 2 Bac. Atr. 556.

By the 8 H. 6. cap. 9, it is enabled, "That those persons making such entries be punished, or else to stand before the coming of the said justices or judges, for whatsoever actions they may be found guilty of, and to be fined with the amount of such actions, if any shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party to be grieved."

By the said statute it is further enabled, "That such persons making such entries be punished, or else to stand before the coming of the said justices or judges, notwithstanding the same justices or judges, in some good town next to the town to be entered, or in some other convenient place, according to their direction, shall have, and moreover they shall have authority and power to inquire of the people of the same county, and of the justices, that make such forcible entries in land and tenements, as of them which the same held with force; and if it be found before any of them, that any such contrary to this statute, then the said justices or judges shall cause to be referred the lands and tenements into entered or held, as of forcible entry, and shall put the party, so put out, in full possession of the same lands and tenements so entered or held as before."

And it is further enabled by the said statute, "That when the said justices or judges make such inquiries as before, they shall make, or one of them shall make their warrants and precepts to be directed to the sheriff of the same county, commanding him, of the King's behalf, to cause to be come before them, and every of them, sufficient and indifferent persons, dwelling next about the lands to be entered; and they shall be examined of their several entries, or of the several entry, and every of them, if the same be found contrary to the statute, and that the said justices or judges shall cause to be referred the lands and tenements next to be entered, as of forcible entry, and shall put the party, so put out, in full possession of the same lands and tenements so entered or held as before."

But it is provided by the said statute, "That no person who keep their petitions with force, in any lands and tenements, whereas of their or their ancestors, or they whose estates they have in such lands and tenements, have continued their petitions by three years or more, be not damaged by force of this statute."

This statute also's found a remedy by scheme of several dills, or action of trespass, to recover the tender damages, to which if the several persons make in their own behalf, the same if described for the defendant, so that he hath good title at law, the defendant is excused from the force, for the plaintiff can't recover in the action if he hath no right; but if the plaintiff prevail, then the force shall be inquired and tried in other cases, if the plaintiff himself, or a person is punished criminally for entering with force.
even where he has a right, though not for peaceably obtaining a possession by force, especially if he has held it for three years in quiet. 5 F. N. 2d. 139. 2 Perk. tit. Force, c. 5, § 14, 29, p. 94, c. 15, 15. 2

By the 21 Eliz. c. 11. The provis in the above statute is further enforced and explained, by which it is declared and enacted, "That no restitution upon any indictment of forcible entry, or holding, be made to any person, if the person so indicted hath had the use of the land in quiet possession for the space of three whole years, together, next before the day of such indictment to found, and his estate therein not ended, which the party indicted may allow for of restitution; and restitution to pay till that be tried, if the other with any manner of lawfully enter the land, and an allegation be tried against the said person so indicted, he is to pay the costs and damages to the other party, as shall be assented by the judges or justices before whom the same shall be tried; the same costs and damages to be recovered and levied, as is usual for costs and damages contained in judgment upon execution." 3

And by the 21 Jas. 1, c. 15, it is enacted, "That such judges, justices or justice of the peace, as by reason of any act or acts of parliament then in force, were authorized and enabled upon inquiry, to give restitution of possession unto tenants, of any estate or freehold of the nature of farms, which they shall enter upon, with force, or from them with holden by force, shall by reason of that act have the like and the same authority and ability from thenceforth (upon indictment of such forcible entries, or forcible holding before them duly found,) to give like restitution of possession unto tenants, or to persons, tenants by copy of court roll, guardians by knighthood, servants, tenants by estate, full tenant, merchant and flapple, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force." 2

A forcible entry must regularly be with a strong hand, with unusual weapons, or with menace of life or limb. 6 H. P. C. 138. Dalh. 320. 1 Hawk. P. C. 145. 1

If a man enters peaceably into a house, but turns the party out of possession by force, or by threats frights him out of possession, this is a forcible entry. Dalh. 209. 1 Hawk. P. C. 145. 11676. But threatening to spoil his goods, or destroy his cattle, if he will not quit his possession, will not make a forcible entry. Bret. tit. Dursif 2, 16. 1 Inf. 252. 1

If a house be bolted, it is a forcible entry to break it open, but it is not so to draw a latch, and enter into the house; and if a man, whose entry is lawful, shall intrude the other out of the house, and enter, the door being open, or only latched, his entry is justifiable. 2 Rel. Rep. 2. 2 Inf. 235. Cram. 70 a. It is said in Ng 135, that there can be no entering if the door be latched; but 1 Hawk. P. C. 145. says, that such an indeterminate circumstances as this, which commonly jurs between neighbour and neighbours, will never bring a man within the meaning of these statutes; and it hath been holden, that an entry into a house 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. 1

If one find a man out of his house, and forcibly withhold him from returning to it, and send persons to take peaceable possession thereof in the party's absence, this, by some opinions, says Hawkins, is no forcible entry, insomuch as he did no violence to the house, but only to the person of the tenant; but he has another opinion, for though the force be not actually done upon the land, nor in the very act of entry, yet force it is used with an immediate intent to make such entry, and the manner of doing of it only prevents the opposition, it can't be said he were without force, which whether it be upon or off the land feemes equally within the statute. 1 Hawk. P. C. 145. 1

If a man enters to detain for rent in arrear with force, this is a forcible entry; because though he do not claim the land stille, yet he claims a right and title of it, which by these statutes he is forbidden to exert by force; but if a man hath right to lands, and it enter them with company armed to church or market, without forcible entry, he cannot claim to it, this is no forcible entry, because his action shall be interpreted according to his intent; but if a man that has a rent be reduced from his distress by force, this is a forcible defile of the rent, for which he may recover treble damages in an affize, or may file and imprison the party; but he cannot force his tenant by any means, for he gives remedy by fine and imprisonment for the unjust force that is offered to any person's right, yet it doth not give the justices power to release the rent, but only the lands and tenements themselves; and therefore no writ of restitution can be awarded. 12 Bl. 175. 20 H. 6, 4. 1

A man may be guilty of a forcible entry in a dwelling house, though there be nobody in the house at the time; and so he may by an entry into lands where any person's wife, children or servants are upon the lands to prefer the possession; because whatsoever a man does by his agents in his own act, and by cattle being upon the ground don't prefer his possession, because they are not capable of being substituted as agents; and therefore their refunding upon the land continues no possession. 2 Rel. Rep. 2. Perk. 45. Cram. juf. 164. Dalh. 315. 1

A forcible entry into a house to the use of A. and B. afterwards agrees to it, this makes it a demission in A. but not a forcible entry within the statute, because the statute doth not punish an agreement, but only the force and violence of an actual entry. 2 H. 7, 16. b. 20 H. 6, 11. a. Cram. juf. 62 a. Dalh. 300. 1

If he, who has an actual eftate, by the right or tenement, continues with force in the possession thereof, after a claim made by one who had a right of entry thereto, he shall be adjudged to have entered forcibly. 1 Hawk. P. C. 145. 1

The circumstances of violence and terror, which will make an entry forcible, will make a detainer forcible also; from whence it follows, that whoever keeps in the house an unusual number of people, or unusual weapons, or threatens to do some bodily hurt to the former possessor, if he dare return, shall be adjudged guilty of a forcible detainer, though no attempt be made to enter, and it hath been said, that he also shall come under the like conflagration, who places men at a distance from the house in order to assault any one, who shall make an attempt to enter it; and that he also is in like manner guilty, who flouts his door against the justice of peace coming by to view the forces, and obstinately refuses to come in; but 'tis said, that a man ought not to be adjudged guilty of this offence for barely refusing to go out of a house, and continuing therein in defiance of another. Cram. juf. 199. 1570. Lamb. 145. 1 Hawk. P. C. 145. 1

If a man enters by the possession by force, through his entry was peaceable, the justices may remove him, if he had no right to enter; but where the entry is at first peaceable and lawful, there, whether the justices may remove a forcible detainer, where it hath not been peaceably held for three years, is a question; for that the justices are not judges of the right, but of the possession only; and if a man be got peaceably into his own, it seems he may defend it by force; and where the jury have found quoniam the entry ignarus, and quoniam the detainer bona fide, such indictments have been quashed, and the restitution granted upon it for false, and a re-
Thee statutes seem to require, that in the indictment the entry must be laid made, or on nonmultitudine gentium, a multitude of people, and that without thee the statute is not perfect; but some have held that equivalent words will be sufficient, especially if the indictment concludes contra formam statuti, and that these words in the statute are in causa abundantia; but it is not sufficient to say only, he entered &c. armis, since that is the common allegation in every trespass. Stile 135. 2 Eliz. 258. A Rel. Reb. 46. 1 Med. 85, 81.

It is sufficient, if a person of such indictment to say, that it was taken before A. B. and C. D. juridicatrix ad pacem domini regis confervandum affirmavit, without swearing, that they had authority to hear and determine felonies and trespasses; for the statute enables all judges of the peace, as such, to take such indictment.

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 closes of meadow or pasture, or into a house or half a rood of land, or into certain lands belonging to such a house, or into such a house, without swearing in what town it lies, or into a tenement with the appendances called Teninenny in D. is not good; for the place must be described with convenient certain, for otherwise the defendant will neither know the special offence, nor to what the juries or sheriff know how to restore the injured party to his possession. Dalt. 15. 2 Rel. Rep. 46. 2 Rol. Atr. 8. 3 Lem. 102. Co. Lit. 6, a. 2 Rol. Atr. 82. pl. 4. 5. 1 Rel. Rep. 334. Cro. Juc. 633. Palm. 27. 2 Rel. Reb. 201. 3 Lem. 266. 3 Lem. 121. Br. tit. For. Ext. 23. 2 Lem. 186. 2 Rol. Atr. 80. pl. 7.

But it hath been resolved, that an indictment for a forcible entry in deumani manumission free muggings, &c. is good, for these are words equivalent. Cro. Juc. 633. Palm. 27.

Alfo 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 tenant belonging, may be quitted as to the land, and bind good as to the house. 2 Lem. 186. 3 Lem. 173. 1 Hench. P. C. 148.

An indictment on the 5 or 15 R. 2, needs not flow he 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 freeholder or leeree for years, &c. for otherwise it doth not appear that such entry was made injurious to any one. 2 Keb. 249. 1 Rol. 65. 1 Hench. 3. 35.

But it is said, that an indictment on 8 H. 6. must shew, that the place was the freehold of the party grated 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 on 8. J. S. without mentioning it was, Adsum exilium libertum tenementum J. S., for otherwise it may be intended, that it was his freehold at the time of the indictment only. 2 Keb. 495. Saltz. 260. Hezly 73. Laish 129.

It is therefore a general rule, that an indictment cannot warrant a retaliation, unless it shall be said that the party was freehold, and that such freehold is sufficiently shewn by a necessary implication.

An indictment on the 8 H. 6. for entering and forcibly expelling my farmer, and diffeing me, is, without shewing what estate he had; for the forcible dillefion is the main point of the indictment, it is sufficient to set forth his full name, &c. But in this case the want of showing that the farmer was ousted, would have been an incurable fault. 1 Hen. 103.

Also an indictment on 21 Jac. 1. cap. 15. must shew, that the party induced was possessed of such an estate as will bring him within the indictment. Before it is not sufficient for it to shew, that he was possessed, 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 possession within the statute in the reciting part of an indictment; as thus, good use. s. was possessed for a certain term of years, &c. 1 Fert. 325. 1 Sid. 152. 1 Abr. 73. 2 Keb. 709. Saltz. 260.

A repugnancy in setting forth the offence in an indictment on these statutes is an incurable fault; as where it is alleged, that the defendants pacifice intraverunt, & J. S. adjumct & bidem vis & armis dillentit, or that the party was dillentit for years, or of a cophold estate, and that the defendant ousted him, or that the defendants did J. S. of land then and yet being his freehold, for it implies that he always continued in possession; and if so, it is impossible he could be dillentit at all; but some say, that this may be reconciled, by intending that he re-entered after the dillefin, and before the indictment; but it seems clear, that if the words Adsum extravit be added, such a repugnancy cannot be helped by any intendsent, and that no retaliation can be awarded on such indictment, whether these words be added or not, because the party alleged to be in dillefin has to have had the freehold at the time it was found. Pop. 205. Regm. 97. 1 Keb. 427. 428. 435. 472. A Brym. 50. 1 Vent. 108. 2 Rol. Rep. 311. Show. 273. 2 Eliz. 121. 1 Sid. 102.

A conviction on 15 R. 2, of a forcible detainer on view, cannot be good, unless it shews, that the defendant was also guilty of a forcible entry; for it seems plain from the express 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 as cited in the conviction; and it seems a reasonable opinion, that an indictment on 8 H. 6. setting forth an entry and forcible detainer is good, without shewing whether the entry was forcible or receiveable; for the words of the statute are, where any duties of 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 Rol. Atr. 89. pl. 10. Palm. 195. 196. 197. Cro. Juc. 19. 20. 21. Cro. Eliz. 915. 1 Saltz. 62.

The time and place of the dillefion are sufficiently set forth in an indictment, alleging, that the defendant tali die intraverunt, &c. &c. A. B. manu fueri dillefius, without adding the words advers & bidem; for the entry and dillefion being to the same nature, and the one plainly tending to the other, it is a natural intendment that they both happened together. Cro. Juc. 41. 1 Harde. P. C. 150.

It has been related, that a dillefion is sufficiently set forth, by alleging, that the defendant entered, &c. into such a tenement, intending to detain the same without adding either the words ilicitum, or expulsii, or inputs, for the word dillefion implies as much. N. 125. Cro. Juc. 32. Cro. Eliz. 186. N. 120. cotent. The
The justices who make the conviction must set the fine.

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For

For

3. Who may be guilty of a forcible entry, and into what places 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 detains from him by one who claims the bare custody of it, cannot be guilty of a forcible entry or detainer within the statute. 1 Hold. 750. Gr. Jus. 18. 245. 3. 535.

A joint tenant or tenant in common may offer against the possession of these estates, either by forcibly ejecting or forcibly holding out his company; for tho' the entry of such a tenant be lawful per & per fine, for that he cannot in any case be punished in an action of trespass at the common law; yet the landlord of his entry no way excuses the violence, or Unless the injury done to his company, and consequently an forcible entry into a meory of a tenant, &c. is good. Latch. 214. Palm. 419. 1 Hawk. P. C. 147. Dall. 315. 3. 7.

A man cannot be indicted for entry into the King's possession before, for that he cannot be displaced. 1 Co. 69. 10 Co. 112.

An infant at the age of eighteen, and some fourteen, or a feme covert, by their own act, may be guilty of a forcible entry or may be driven from the same; but it is doubted, whether the infant may be imprisoned, because his infancy is an excuse of the non'est of its indiscretion, and he shall not be subject to corporeal 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 void, and therefore the person entering is only punishable. Brid. 173. Camp. Jus. 63. Dall. 300.

One may be guilty of this offense by a force to ecclesiastical possessions, as churches, vicarage houfes, &c. as much as if the same were done to any temporal inheritance. 1 Sid. 161. 1 Lev. 99. 1 Kib. 438. Gr. Jus. 41.

Also an indictment 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 rents, eftates, common, an office. Gr. Cor. 201, 486.

But the justices cannot award restitution for these, because no man can be put out of possession of them, but at his own election. 3. Salk. 151. 4. Dyer 141. 5. 3. E. 1. 11. 6. 7. 151. 8. 5. 151.

And the justices cannot award restitution for these, because no man can be put out of possession of them, but at his own election. 3. Salk. 151. 4. Dyer 141. 5. 3. E. 1. 11. 6. 7. 151. 8. 5. 151.

Also it is said, that the three years possession must be lawful, and therefore that a difference can in no case justify a forcible entry or detainer against the difference having a right of entry, as it seems that he may against a stranger, or even against the difference, having by his deserted the right of entry. Dall. Cor. 79. 22 H. 6. 6. 7.

Also it is said, that the three years possession must be lawful, and therefore that a difference can in no case justify a forcible entry or detainer against the difference having a right of entry, as it seems that he may against a stranger, or even against the difference, having by his deserted the right of entry. Dall. Cor. 79. 22 H. 6. 6. 7.

The same justice or justices, before whom an indictment 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 indictment be removed out of King's Bench, and they 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 indictment be found before the justices of the peace at their quarter-sessions, they have authority to award a writ of restitution, because the statute having given power to the justices or justice to relieve, it may as well be done by them in court as out of it; but the justices of open and terminer or general gaol delivery, that they may enquire of forcible entries, and fine the perators, yet they cannot award a writ of restitution. H. P. C. 147. Brid. 175. 11 Co. 69. 69. Dall. 245. 5. 8. 115. 111. 1 Del. Jus. 314. Lamb. 106. 161. 1 Pet. 328. 1 Kib. 88. 1 Sid. 150.

The sheriff, if need be, may raise the pursuivants to assist him in the execution of the writ of restitution; the more so if he return, that he could not make restitution by reason of reftitutions, he shall be amended. Lamb. Jus. 157. 1 Sid. 152. 153.

Restitution ought only to be awarded for the possession of the tenements visible and corporeal, for as a man, who has a right to such as are visible and incorporeal, as rents, common, cannot be put out of possession of them, but only at his own election, by a fiction of law no cause to be severer damages, and the preterit 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


Restitution shall only be awarded to him who is found by the inquest to have been put out of an actual possession, and consequently that it shall not be awarded to one who was only left in law, as to an heir on whom a lease was granted, or in the death of the ancestor, before any actual entry made by such heir, for it shall not be granted to an heir upon an inquest finding a forcible entry made upon his ancestor. Lamb. 153. 154. Dall. Cor. 83. Gr. Jus. 192. 1 Hawk. P. C. 151.

It appears by the principle in the statute 8 H. 6, and also by the 3. E. 11. that any one indicted upon these statutes may allege such possession, to play the award of restitution; in the construction whereof, f. 9 Serjeant Hawkins, it hath been held, that such possession must have continued without interruption during three whole years, and after the inquest, and therefore he, who having been in possession of land for three years or more, is forcibly oued, and then relieved 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 held, that he, who under a defeasible title hath been never 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, in such a case, is sufficient to award restitution, 1 Hawk. P. C. 152. and the authorities cited are. Dall. Cor. 79. Gr. Jus. 41. H. P. C. 139. 121. 41. 42. 22 H. 6. 18. Bre. tit. Force 22, 29. 1 Sid. 236.

No it is said, that the three years possession must be of a lawful estate, and therefore that a difference can in no case justify a forcible entry or detainer against the difference having a right of entry, as it seems that he may against a stranger, or even against the difference, having by his acts left his right of entry. Dall. Cor. 79. 22 H. 6. 6. 7. 151.

Wherever such possession is pleaded in bat of a restitution to 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 flow under what title, or what estate forcible possession was, because not the title, but the possession only is material. 1 Kib. 538. 2 Del. Jus. 111. 111. 1 Del. Jus. 538. Reyman. 84. 1 Lev. 265.

If one who has been three years in possession, be afterwards oued, and the same day re-enter with force, and be also indicted on the same date; yet it seems, that by the plain meaning and reason of the statute, he can no more bar the restitution of the party forcibly oued 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 person indicted have been in quiet possession...
Hawk. Hawk. Hawk. Which form year, be late H. Therefore in of whereof P. to him cutor. whole the its fet rarific an an, thru' tried, fclf. King's but refused the statutes for, them, that, of 141. of juris if fact that, of the 148. of 141. of 140. of the 141. of 140. of 134. of the 140. of 139. of 138. of the 137. of the 136. of the 135. of the 134. of the 133. of the 132. of the 131. of the 130. of the 129. of the 128. of the 127. of the 126. of the 125. of the 124. of the 123. of the 122. of the 121. of the 120. of the 119. of the 118. of the 117. of the 116. of the 115. of the 114. of the 113. of the 112. of the 111. of the 110. of the 109. of the 108. of the 107. of the 106. of the 105. of the 104. of the 103. of the 102. of the 101. of the 100. of the 99. of the 98. of the 97. of the 96. of the 95. of the 94. of the 93. of the 92. of the 91. of the 90. of the 89. of the 88. of the 87. of the 86. of the 85. of the 84. of the 83. of the 82. of the 81. of the 80. of the 79. of the 78. of the 77. of the 76. of the 75. of the 74. of the 73. of the 72. of the 71. of the 70. of the 69. of the 68. of the 67. of the 66. of the 65. of the 64. of the 63. of the 62. of the 61. of the 60. of the 59. of the 58. of the 57. of the 56. of the 55. of the 54. of the 53. of the 52. of the 51. of the 50. of the 49. of the 48. of the 47. of the 46. of the 45. of the 44. of the 43. of the 42. of the 41. of the 40. of the 39. of the 38. of the 37. of the 36. of the 35. of the 34. of the 33. of the 32. of the 31. of the 30. of the 29. of the 28. of the 27. of the 26. of the 25. of the 24. of the 23. of the 22. of the 21. of the 20. of the 19. of the 18. of the 17. of the 16. of the 15. of the 14. of the 13. of the 12. of the 11. of the 10. of the 9. of the 8. of the 7. of the 6. of the 5. of the 4. of the 3. of the 2. of the 1.

On a plea of three years pollution to an inquisition of forensic entry removed by certiorari, the defendant, if he be found against him, shall pay costs. Ed. Rayn. 1536.

Mittimus for a forensic detainer, on fat. 15 Ric. 2. c. 2.

Middlex. 1 judge one of the justices of our Sovereign Lord the King's Majestie assigned to keep the peace within the said court and the several parts thereof, and to hear and determine divers felonies, treasons, and other misdemeanors in the said county committed. To the keeper of his Majesty's gaol, at —— in the said county, and to his deputy and deputies there, and to every of them, greeting, whereas upon complaint made unto the said defendant, by —— of —— in the said county, yeoman, I have immediately to the dwelling house of the said —— after said in the said county, and there found late of —— labourer, late of the same county, forcibly with strong and armed power holding the said house, against the peace and quiet of our said Lord the King, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said ——, ——, and ——, conciliated of the said forcible holding, Command you to seize, and respectively to receive them into your said gaol, and there to keep them, and every of them respectively, until they shall have respectively paid the several sums of ten pounds of good and lawful money of Great Britain, to our said Sovereign Lord the King, which I have set and imposed upon every of them separately, for a fine and for your快手, and to have them discharged, by the said defendant, at the peril that may follow thereon. Given at —— after said in the county of ——, under my hand and seal the —— day of —— in the —— year of the reign of our said Sovereign Lord King George the Third.

Record of a forensic detainer upon view; from Lord Raymond's Reports 1515.

Kent. BE it remembered, that on the 15th day of Sep- tober in the first year of the reign of our Sovereign Lord King George the Second, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, at Beckett in the county of Kent afoaid, Eliz. Elwell complained to us, E. B. P., and W. P. three of the justices of our said Lord the King assigned to keep the peace in the said county, and also to hear and determine divers felonies, treasons, and other misdemeanors in the said county committed, that Sir Edm. Elwell, late of London, Bert. J. B. and D. M. into the mischief of her the said E. E. being the manjofy-house of her the said E. E. called Lansley-house, situated within the parish of Beckett in the said county, did enter, and her the said E. E. out of the mischief of afoaid, without any due time of the entry of the mischief, was seized as of the freedom of her the said E. E. for the term of her life, unlawfully ejected, expelled and assessed, and the said mischief from her the said E. E. unlawfully with strong and armed power do yet hold, and from her detention, against the form of the statute in such case made and provided; whereas the same E. E. then, to wit, on the said 15th day of September, as the parish of B. afoaid, prayed of us so as afoaid being justices, to her in this behalf that a due remedy be provided according to the form of the statute afoaid: Which complaint and afoaid in the co-afoaid justices being heard, we the afoaid E. B. harnet, P. B. and W. P. of-fores, justices afoaid, to the mischief afoaid personally have come, and do then and there find and see the afoaid Eom. E. J. B. and W. M. the afoaid mischief without the said Lord the King, with strong and armed power detaining, and afoaid in such case made and provided, according to the said E. E. so as is afoaid hath unto us complained: Therefore it is confidered by us the afoaid justices, that the afoaid Eom. E. J. B. and W. M. afoaid mischief without the said Lord the King, with strong and armed power are, as we our proper view then and there in afoaid bond, are U...
Indictment for a forcible entry and detainee at common law.

Middlesex. 

**THE jurors of our Lord the King upon their oath present, that** late of the county of Kent, gentleman, and late of the same, yeoman, together with divers other malefactors and disturbers of the peace of our Lord the King (whose names to the jurors aforesaid are yet unknown) on the day of in the year of our Lord the King, with force and arms, at the parish of Aforesaid, in the county of Kent, unlawfully and injuriously did enter, and that the said and together with the said malefactors, and there with force and arms unlawfully and injuriously did compel, engine, and put out the said from the possession of the said barn and orchard, and the said as aforesaid expelled, assaulted, and put out from the possession of the said barn and orchard, then and there with force and arms unlawfully and injuriously did keep out, and still do keep out, to the great damage of the said and against the peace of our Lord the King, his court and dignity.

Indictment for the statute.

Middlesex. 

**THE jurors of our Lord the King upon their oath present, that** late of the parish of in the county aforesaid, gentleman, on the day of in the year of our Lord the King, was aforesaid of a certain meadow, with the appertainances thereof, sitting, lying and being in the same, in the parish aforesaid, for a certain term of years, and then and still and to come and unexpired, and being aforesaid thereof, our Lord the King, in the said county, without being adviser to the said and in the year aforesaid, into the same meadow, with the appertainances aforesaid, in the parish and county aforesaid, with force and arms, and with strong force unlawfully did enter, and the said aforesaid, from the peaceable possession of the said meadow, with the appertainances aforesaid, there with force and arms, and with strong force, unlawfully did compel and put out, and the said as aforesaid, force and arms, and with strong force, unlawfully did compel and put out, and the said him the said and in the year aforesaid, into the said meadow, with the appertainances aforesaid, in the parish and county aforesaid, with force and arms, and with strong force, unlawfully and injuriously then and there did keep out, and still doth keep out to the great damage of the said and against the peace of our Lord the King, and against the form of the statutes in that case made and provided.

The inquisition, indictment, or finding of the jury.

Middlesex. 

**AN inquisition for our Sovereign Lord the King, inquired and taken at** in the said county, the day of in the year of our Lord the King, by the oaths of good and lawful men of the said county, before , one of the justices of our said Lord the King assigned to keep the peace in the said county, to enquire of divers felonies, trepasses, and other misdemeanours in the said county committed, who are upon their oath aforesaid, that late of yeoman, lawfully and peaceably was seized in his demesne as followeth, viz. in our Lord the King, with the appertainances, in the county aforesaid, and his said possession and feuage, as follows continued until the day of yeoman, yeoman, and late of the same, yeoman, and of our Lord the King, the day of the next high feast, with strong force and armed power, into the meadow aforesaid, with the appertainances, did enter, and him the said thereof did, and into the same meadow, with the said malefactors, did enter, and him the said thereof did, and into the same meadow, with the said malefactors, did enter, and the malefactors, with the appertainances, in the aforesaid in the county aforesaid, and his said possession and feuage, as aforesaid continued until the day of yeoman, yeoman, and late of the same, yeoman, and of our Lord the King, at the day of the taking of this inquisition, with like strong force and armed power, did enter, and do yet keep out, to the great damage of our Lord the King, and against the form of the statute in such case made and provided.

Warrant to the sheriff for restitution.

Middlesex. 

**Warrant for our Sovereign Lord the King aforesaid to keep the peace in the said county, and to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, to the sheriff of the said county, greeting. Whereas by an inquisition before me the justice aforesaid, at the said county aforesaid, on this present day of in the year of our Lord the King, upon the oaths of , and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found, that late of yeoman, yeoman, and late of yeoman, on the day of this present, now loth paid, into a certain meadow, with the appertainances, in the county aforesaid, gentleman, yeoman, lying and being aforesaid in the county aforesaid, with force and arms did enter, and him the said thereof with strong force and armed power, did drive out, and him the said thereof with strong force and armed power, did drive out, from the aforesaid meadow, with the said appertainances, for this present day of the taking of the said inquisition, with strong force and armed power, did keep out, and do yet keep out, as by the inquisition aforesaid more fully appears of record: Therefore, on the behalf of our said Sovereign Lord the King, I charge and command you, that taking with you the power of the county (if it be needful) you go to the said meadow, and thereto the premises, and the same with the appertainances you cause to be reserved, and that you cause the said to be restored, and put into his full possession thereof, as before the entry aforesaid, was settled, according as the form of the statute doth direct: And that you shall find no witness, or any in the premises, on the penalty thereof in default. Given under my hand and seal in the said county, the day of in the year of our Lord the King.

Precept.
Precept to the Sheriff to return a jury.

**Middlesex.**

Lord the King assented to keep the peace in the said county, and to hear and determine divers seditious, tumultuous, and other misdemeanors 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 come to the assizes and quarter-sessions, as in the county afsayred, on the last day of next ensuing, twenty-four sufficient and indigent men of the neighbourhood of afsayred in the county afsayred, every of whom shall have lands or tenements of forty shillings yearly at the least, above twenty shillings to improve upon their oaths for our said Lord the King, of a certain entry made with strong land (as it is said) into the meafure of one afsayred in the county afsayred, against the form of the statute in such cause made and provided. And you are to return upon every of the jurors by you in this behalf to be impanelled, twenty shillings by you at the afsayred day. And have there these precincts; and this you shall in no wise omit upon the peril that shall thereof ensue. Without the said afsayred in the county afsayred, the last day of in the year of the reign of the.

**The jurors oath.**

**YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a for- feiture entry [sic: denneis] said to have been lately committed in the dwelling house within this county; you shall spare no one for favour or afflication, nor grudge 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 former hath taken on his part, and you of every you shall truly observe and keep on your part. So help you God.

**Possible marriage. See Marriage.**

**Fealty, A furd or flavel, made by darning or penning up the water—Non licet aliqui de custodiis fae- dere dammas aut lardos, aut alia impedimenta in aliquibus locantibus, fartheris, juifitis fere aquinis communibus in maris profedit. Ordinario Monali trium Remelendium, p. 69.**

**Fenals, from the Sax. ford, e. a. river, vadum fere tunciam. 'Tis mentioned in the Menalfeo, 1 tem. pag. 657. Et tenit uique ad numam aquam de Are, & lardos eximium præ, &c.**

**A grant of land or headland, floating upon other bounds. Coewell, 1717.**

**Foreshipmen (from te Sax. for, ante, and coaptan, mandaetis, emper) Præ emption. — Et non licet quis eam alii- gand forshipemen facere barmannis, & dare thoriumium in foium. Chron. Brompton, Col. 897, 899. De Nave Negotial, & L. Aichidi, e. 23.**

**Forfided, Barred, out, or excluded for ever; as the baring the equity of redemption on mortgages, &c. 2 part. Inf. fol. 258. 33 Hen. 8. e. 39.**

**Forfure of mortgages. See Mortgage.**

**Forgers, Were purveyors otherwise called, going before the King in progress, to provide for him. 36 Ed. 3. c. 5.**

**Foreign, (Fr. forai, Lat. foricium, extraneous) Strange, outlandish, or of another country, and in our law is used advizedly, being joined with divers subfun- dion in several senses. Kitch, 126.**

**Foreign anwser, Is such an answer as is not triable in the country where it is made. 15 H. 6. cap. 5.**

**Foreign attachment, Is an attachment of a foreigner's goods found within a liberty, or a city, for the satisfac- tion of some citizen whom the foreigner is indebted to. As Lempury (anciently Lemmerty) is the borough and the foreign; which latt is within the jurisdiction of the**

**manor, but not within the bailiiff of the borough's liberty.**

**So foreign court of the hon. of Gloucester, Churf. 2 Pt. m. 2. 5. Foreign kings, and foreign fields, is a custom within the city of London, when being found prejud- dicul over the farmers of cattle in Smithfield, it was en- actcd 23 & 24 Car. 2. that as well foragers as freemen may buy and sell any cattle there. Cowell, edit. 1777. See Attachmen.**

**Foreign courts, Decrees, judgments, &c. there, how far binding or regarded or. The ship being un- laden at Barcelot, where the freight was payable by the charter-party, the factor retuming to pay the freight, the matter of the ship lagged there in the Admiralty for it; and the court being heard, and judgment being there given, that the matter should have its freight, but that the dam- ages the goods had sustained in the voyage, by reason of the deviation, should be deducted, and the account transferred to the deliquatours, (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 Chan- cellor 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, the factor was a native of that place, and therefore, in all probability, might again prevail; and defendant being willing to defit in fait there, this lord- ship directed a trial here by jurors, to ascertain the damages sustained by the deviation.»**


**Discharge of a foreign jurisdiction from a bill of ex- change drawn here, 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. 222.**

**Special bail shall not be given on a recovery in a foreign court. Stran. 1243.**

**Forigners, Though made denizens or naturalized here, are dudibled to bear offices in the government, to be of the privy council, members of parliament, &c. by the act of fetention of the crown. 12 Will. 3. e. 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 dif- cribed from that which is subject to the crown of this kingdom; but it may be tried here by the Common law; but it may be tried and determined by the comitile and martial, according to the Civil law; or the fault may be examined by the privy council, and tried by commiffioners ap- pointed by the King in any country of England, and by the law of the land, 3 Inf. 40. 33 H. 8. One Hutchinfen killed Mr. Celsin abroad in Portugal, for which he was tried there, and acquitted, the exemplification of which acqui- shrac he produced under the Great feal 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 acquired by the laws of Portugal, could not be tried again for the fame fact here. 3 Ed. 728. If a stranger of Holland, or any foreign king- dom, buys goods at London, and gives a note under his hand for payment, and then goes away privately into Holland; he 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 Inf. 38. Alfo at the inference of an ambassador or conful, such a perfon of England, or any criminal proceeding against him in any foreign country, cannot be proceeded against by a foreign kingdom hitter. Where bond is given, or contract made in a foreign kingdom, it may be tried in the King's Bench.»**

**Hib. 11. 2 Bafif. 332.**

**Foreign lands, Judgments, &c. of things done there. 4. A. was tried in the Admiralty upon an obligation sup- posed to be made and delivered in France, and upon which he prayed a prohibition. Per cur. Such a bond may be fit here**
here in B. R. but being begun in the Admiralty, we cannot allude them, because the peril of the
ship are saved, and in which may be examined
th but not here.
3 Le. 232. Mid. 31 Ed. B. R.
Foreign laws and customs, how last regarded.
On a marriage of two French people in France, the con-
tract was, that the husband, surviving the wife, should
have the fortune of the estate, and to have the benefit of the
contract. It was objected, that they could not bring over the French
law hither, but must now be governed by the laws of Eng-
land, the husband surviving is intituled to all the
wife's perquisites, or at least there was no colour to
carry the same further than the sum fluctuated in the contract,
and not to that which was left to go according to the
custom of Paris, which is only a local law, and so could
have no benefit of it here. It was answered, that mar-
rriage-contracts are to be supported in all countries, with-
out regard to the place where made, and that this con-
tract extended to the whole fortune of the wife, and not
only to the particular mentioned, and the saying that
the reft should go according to the custom of Paris, is
as much as if the custom had been recited at large, and
that the fortune should go. Lord Keeper decreed reliefs
for the wife as she was fluctuated; and Lords, they had relief for the whole.
Chanc. Prec. 207. Mid. 1703. S. C. cited in a cafe of marriage articles
made in Holland, and that by the law of Holland,
marrige-articles take place of any other debts, and it was
inflicted, that therefore they should be considered here ac-
cording to the law 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 cafe, what is the
law of Holland, as in the above cafe it was proved, what
was the law of France; without which proofs, our court
Fracanet v. Duvell.
The plaintiffs being creditors of Colley, preferred
their bill against the defendant, being all foreigners, but the
goods were paid over into England, into merchants hands
by Colley; and this court taking notice, in respect of the
different contries, and the redention of the rents of the
fealf by those King's Hous; secondly, because the bill
was not sealed; thirdly, because the debt grew in France,
and he came over hither to keep his body from arreft,
the court decreed the debts, and caufed a decreet to be
drawn up for confafs, because the defendant would not
answer, and there was no party in hands, to pay the
debts, at they were powred over to others: to the
ufe of an infant. T. 131, 132. cites 8 Sec. Sore
& Elam v. Colly.
The plaintiff being a Dutch woman brought 4000l.
portion to her husband, who agreed with her before mar-
rriage, to leave a complete maintenance for herself and
her children, but not expressing what; the marriage took
effect, but he declining in effate, his friends called on
him, and he thereupon asigned 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 re-
cived the sum, and paid the rent of the house, and there-
fore his plea was granted, and the agreement and af-
signment 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
Cafe.
Foreign money. When one demands foreign coin
in specie, the writ ought to be in the deines only; but
when the cause is in English silver is demanded, it may
be in the deines and distinct. Per cur. to Wright &
Eyre f. Sc. to agree, that by English Coine
are as foreign coin. Lorn. 288. Mid. 5 & M. in
cafe of Pope v. St. Leger, &c. 39 Ps. 1 Bar. B. R.
and Ward v. Kidbrooke &c. Kidbrooke. It ought to be in the
distinct only, and they may count the value.
Per Hill Ch. 69. C. & C. are words in their force or
by Court, they must demand English money, and not foreign money, and they are to
value it according to the value it bears here in England; but if a man will bring an action for foreign money, it must be deines.
13 Mid. 541.
Foreign opprondon or appopos. (Parinçarmus apporpon,) A
man pleading for his satisfaction, also an assignee of all the debts, and if
they are appopled of their sums out of the Pipe office, do
repair to be appopled by him of their Green wax. He ex-
amines the scriff's efferts with the record, and appopled the
sheriff what he pays to every particular sum therein,
Practises of the Exchequer, ep. 87. See 4 left. fol. 107.
Foreign plantations. A writ of error bringing
her in their judgments in Barbados, viz. in any dom-
nions belonging to England. Vagg. 402. in cafe of
Pross in Wales.
In Barbados they have laws different from ours, as
that a dead body flall be a feme cover, &c. 2. 1 Act. 46.
Trin. 37 Cor. 2. C. A. Arg. in cafe of Davies v. Pindar.
An appeal lies from thofe lands to the King and Coun-
cell here, but that is by confittutions of their own. Ag.
Mid. 46. in cafe of Davies v. Pindar.
The King constituted a governor and council of State
of Barbados by the laws of Barbadoes, as well as the enforcement
of the enforcement of the governor for imputing the plea by order of the Council, Judgment was given for the plaintiff
in B. R. Hall. 2 fac. 2. 2 Mid. 159. Winbam v. Dutton.
But in a writ of error in the House of Lords, it was
argued, that the King did not appear to the King gave
any authority to the Governor and Council to commit,
yet it is incident 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 of the Governor and Council in either 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 faime was accordingly reversed. Par. Coif. 34.
These plantations are parcel of the realms, as county palatines are, the rights and interest are ever de-
determined in Chancery here, only that for necessity and
encouragement of trade, they make plantation-lands as
affets in certain cases to pay debts; in all other things they make rules for them, according to the common
cafe of Dutton v. Jacobs.
It was inquired by Council, that by the custom
of the island of Barbadoes, a plantation there, that it be a fee-
密封e effate, is in the first place liable to the payment of
debts, so that the owner cannot, by his will, so devife his
plantation, but that it will be liable to the payment of his
debts; but here debts may be the debts contracted on the
place, or elsewhere, for matters relating to the plant-
A recovered a debt contracted here against an exec-
utor in manner of a plantation in Barbadoes, and brought an action of trover, and had judgment for the
cited in a case Maynard's cafe.
A plantation in Barbadoes is not a testamentary effate
by the laws now in force. Per cur. Trin. 1687.
Vern. 453. No. B. 5.
In Barbadoes, the freolds are Subject to debts, and
are enforced as chattels till the creditors are satisfied, and
then the land derived to the heir. 4 Mid. 226. 5 W.
& M. B. R. in case of Blundard v. Lydiard.
A paftiff may sue in the Admiral court, if he will
sue in the Admiralty. Vern. 63. in case of Virginia.
He apprises the contract in England, to sue here. But a part of the contract bargain, and part over to the
said Virginia, or
or upon the sea, the Common law only shall have jurisdic-
tion, and those are the true differences. Per Jones J. 2 Rot. R. 442. Hill 22. Jour. B. R. Cooper’s case. The
reason why an ejection 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 sheriffs; per Tynedale J. Tint. 59. Hill 21 & 22 Cor. 2. B. R. Goff v. The Mayor, Etc. This is also the case in Jamaica. The
Court cannot adjudicate on the usages of the lands lying in Jamaica, but they must be tried by a jury. 2 Med. 450. Trin. 29 Cor. 2. C. B. Goff v. Elbin.
Lands lying in Jamaica pass by grant, and no livery and
freein is necessary. Med. 240. Trin. 29 Cor. 2. G.
Cooper v. Elbin. The reason why a suit should not be tried in Jamaica, because the
Treason done in Carolina, in raising a rebellion there,
may be tried in Middlesex, by 25 H. S. 2. 3 Salk. 538.
Laws of England do not extend to Virginia, being a
conquered country; their law is, what the King pleases. Per Hill Ch. J. 2 Salk. 666. Smith v. Brewin and Cholmondeley.
Leffor brought debt against leffor for rent, upon a de-
scribe 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 ouster were pleaded, it could not be tried here, and that the right of the land and defendant depending on foreign
laws, cannot be given in evidence here. And per cur.
Where an action is local, it must be laid accordingly;
therefore if the leffor declares on the privilege of efface, and that lies in Ireland, &c. the action must be brought there; for the efface is local, therefore such leffor cannot
maintain the action without naming an affidavit of a term in Ire-
land; for the action is founded on a privilege of efface, otherwise ‘tis founded on a privilege of contract,
which is tranitory, as debt for rent by leffor against leffor, for that may be maintained where the land lies not; and if a foreign issue, which is local, should happen, it
may be tried here where the action is local for that purpose.
there may be a fogulation 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 country, and on mil debt pleaded, you
may give the laws of that country in evidence. 2 Salk. 651.
Trin. 3 Am. B. R. Woy v. Tally.
If there is no such uninhabited country found out by
England subjects, as the law is the birth-right of every sub-
eject, so wherever they go, they carry their laws with them, and therefore such new-found country is to be
given the laws of England. 2 Wins’s Rep. 75. says, it
was laid by the Master of the Rolls, 9 Augis 1773. 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 there, where the plantation lies. Therefore it has been determined, that the statute of
frauds and perjuries, which requires three witnesses to a
will, and that these should subscribe in the teftator’s
preference, in case of a devile of land, does not bind Bar-
bonian. Ibid.
Foreign plea, Is a refusal of the judge, as incompe-
tent, because the matter in question is not within his jurisdic-
tion. Kitchin, f. 75. 4 H. 8. cap. 2. and 22
H. 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 of England, 4th Carist. 425. Peofh. 9 W. 3. B. R. Cholmley v. Broom.
Ancient demeons, and all pleas of privilege, are pleas 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 Med. 333. Chol-
mondeley v. Broom.
VOL. II. N°. 77.

By flat. 6 Ric. 2. c. 2. In writs of debt and account, and
all other such actions, if in pleas upon the same
writs it shall be alleged, 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 soci-li-like actions, might be brought in any
county, where the party might be brought in to
answer, and the suit might have been of a con-
tact or receipt, &c. in any other county; because de-
bitum et contractus, &c. jsto nullius loci. 7 Rep. 3. in
Butter’s case.
It appears by the declaration, that the money was to
be paid out of the jurisdicton of the court, the judg-
mint 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 plain-
tiff may enter judgment on a nihil debit, for such a for-
reign plea, not being sworn, it is upon the matter. Sti.
A prohibition was prayed to the court of the commer,
to an action of debt there commenced; for that the
defendant had pleaded before impartial. That the caufe of
debt did arise in a place out of their jurisdiction, and
offered to have sworn his plea, and that if this plea; and a prohibition was granted; for inferior courts
have not cognizance of tranitory things, which arise out of their jurisdiction, as F. N. B. 45. is: But
then ‘tis not sufficient to furnise such matter for a pro-
bhibition, but a plea to that effect must be tender’d in
the inferior court, and that before any instance any
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. Tint. 180. Hill 23 & 24
Cor. 2. B. R. Cholmley v. Broom.
Debt was brought in B. R. on a bond made at Chelfer,
the defendant did not impele but pleaded by attorney,
that he is, and at the time of the action brought was
an inhabitant, and notoriously converfant at Nantwich,
within the county palantine of Chelfer, and prayed judg-
ment if the court of B. R. ought 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 infiltred, that ‘tho’ this
is a plea to the jurisdiction, yet it is not a foreign plea,
and therefore need not be sworn to; and accordingly the
judgment was set aside. See Earis 402. Poleh. 9 W. 3.
B. R. Cholmley v. Broom, and 5 Med. 335. Cholmdeley
S. C.
Debt was brought in London. A prohibition was
moved for, and granted nul. upon fogulation that the
defendant had tended for plea below, that the cause did
arise out of their jurisdiction, and offered to make oath
to the truth of it. Now it was showed, that he tended
the plea after the court was up, whereas it should be, in
propriis persona, and in court. And ‘tho’ an affidavit was
offered in B. R. of the truth of the plea; and one Turner’s
case, 4 Jac. 2. was the plea cited out of B. R. It was
shown that the prohibition had been granted upon affidavit in B. R. without oath below; yet by three judiques, obfente Hall, the rule was dicharged. For in all pleas that ought a court of jurisdiction, whether inferior or superior, there must be
oath, in that court, of the truth of the plea. 6 Med. 140.
Poleh. 3 A. m. B. R. Sparks v. Wood.
In debt, if the defendant pleads foreign plea in an-
other county in perian, he shall not be examined; but if
it be by attorney, the attorney shall be examined. But
in this case they ufe to examine the party at his
discretion, not to be sworn to. Br. Examination. pl. 23. cites 2 Ed.
4. 10.
If one be tried in an inferior court, for a matter out
of the jurisdicton, the defendant may either have a pro-
hibition from one of the Common law courts, or may,
if it happen in the vacation, and it happens then, when
the Chancery only is open, move the court of Chancery
for
FOR

for prohibition, but then it must appear upon oath, that the matter arose out of the jurisdiction, and that the defendant tendered a foreign plea, which was refused. Wilks's Rep. 476, Trin. 1718. Anno.

But if a prohibition has been granted improvidently, and without these circumstances, the court will grant a jura
perpetuo thereto. Ibid.

And it is the proper and or shall appear on the face of the declaration, that the matter is out of the jurisdiction of the court, then a prohibition will be granted without oath of hav-
ing tendered a foreign plea, and in those cases equity imitates the Common law. Ibid. 477.

And in a late case, which was brought the last fall after Trinity term, where the court had granted a prohibi-
tion to an action in the courts of London, upon an affidavit, that the matter arose out of the jurisdiction, it appear-
ing at another day, that the defendant had imparked generally, (which admitted the jurisdiction) and to which
not afterwards be allowed to plead a foreign plea, the court granted a jura perpetua to the writ of prohibition.
Ibid. 477. See 2nd Inst. tit. Foreign Plea.

Foreign Service, is that whereby a mean lord holds over of another, without the compals of his own fee. (Brake, tit. Tenures, 29, 95, 351. num. 12 & 28. Kitch. (ed. 2.) Or else that which is of a tenant personal in a tenant lord, or to the lord paramount of the fee. Of which service, thus Bracton, (lib. 2. cap. 16. num. 7.) Item fuit quandam servitutem quia
defunt corinacula, quorum just in earto de festinantia caprae & nominativa; & quia idem dicit palinse cointe,
quia pertinent ad dominum regni, & non ad domum capitale, ut cum in propria persona profitaetur in servitut, vel nisi cum pro servitute suo justiscretor domini regni, quasi modoque, & fiant in certis temporibus, cum cujus & necessiris eurentur, & varia habent munus, & derius: Quodcumque enim nominator corinuncia, largum fumus vacat,
quia festinantia domini regni, quandamque jiunguntur, quodcumque, & fiant in certis temporibus, & idem forinsecum dicit potest, quia fit & capitatur foris, ficta extra festinantiam quid
fit domini capitale. Foreign Service is to be knights-
service or ecusso uncertain. Perkins, Reformatus 650.


Foreign States. A. by authority of the King of Denmark, feigned and condemned goods in some of the
domains of the King of Denmark, according to the law of that land, and coming into England was pro-
secuted here for the same. The court thought this was a matter of flate, and exercised the law of another
King of England, and that what was done was according to their law, and that it was not properly triable here, whether the King of Denmark had power to make such a grant, and decreed a perpetual in-

It man obtains a judgment or sentence in France, yet here the debt must be considered as a debt by simple
contract, He can maintain no action here, but an in-
debt. off. or an infulous convosito, & they both parties were foreigners, that will not help the plaintiff. Per
Lord Keeper. Hil. 1705. 2 Vern. R. Daplin v. De
Royen.

Where a foreign court hath jurisdiction of a cause, and the persons are within it, the sentence must bind
without regard to what law is here; and the sentence
appearing, is not to be controlled by evidence that the law
is not so far. Sol. Oh. Ca. in Lord King's time 69.
Mich. 1725, Bourreux v. emmunch.

English merchants resorting to Denmark, to go to the
flaple at North Bergen, 8 H. 6. c. 2.

Importation of the produce of the Duke of Burgundy's country prohibited, till he shall recall his prohibition of
Englishe drapery, 27 H. 6. c. 1. 28 H. 6. c. 1. 4 Ed. 4.
5. 5. 5.

An oath and bond to be exacted of thos that go in
to foreign service, 3 Jac. 1. c. 4. sect. 18.

Difabilities of children sent into foreign parts for edu-
cation, without licence. 3 Jac. 1. c. 5. sect. 16.

Lending money to a foreign prince without licence prohibited, 3 Geo. 2. c. 5.

SUBJ.-Accepting commissions in the Dutch brigade in the
Dutch service, to take the oaths to His Majesty, 29
Geo. 2. c. 17. sect. 5.

Offences committed abroad may be tried in Great Bri-
tain, 2 Geo. 2. c. 17. sect. 6. 6.

Foreign Writter. See Writter.

Judicature. A tribunal. Signifies a judgment, wise, a thing determined, or put out of the thing in ques-
tion: It signifies to be compounded of just, i.e. pra-
ter and iusser, judicatere Bracton, lib. 4. cap. 3,
num. 5; both these words, Et non permittas quod A, capitales dominus fuit inulis habet exequiendis curtis; & quae in curis non permissa, non sequitur exequientur. Coram Cur- tiero usw. 41, 59. and Odd. Stat. Bree. fol. 44 & 51.

And the fifth Ed. 3. c. 9 and 21 Rich. 2. c. 12.

Forjudicatus, with authors of other nations, signifies as much as confessed, or as deprehens in the ancient Roman
law, as appeareth by Isacriuius de Fructibus, decis. 101.


Forjudged the court, is when an officer of the court
is expoused the same for the issue or not appearing
or not appearing to an action by bill filed against him; and in the
latter he is not to be re-admitted, till he shall appear. 2 H. 4.
8. he shall lose his office, and he be forejudged the court.

Swearing to a copy of any instrument of manufacture.
No bill shall be filed against an officer, clerk, or
minister of the court, to be called in court, in order to a
forjudge, until the bill be actually entered on rec-
dord, and a number roll actually put to the bill. Trin.
21 Car. 2. This rule is in a great measure diffused.
You may take a bill on any man's oath, and it may
be stamped with a double penny stamp, which the profane
marks as entered, on being paid for the entry, and it
is thereby fupposed to be entered, though no number roll
is put on the bill; then you carry the bill to W. Seider's
and give it to one of the clerks, who calls the de-
dendant forjudged, are they without a hund, after
which you give a rule on the bill with the evidence,
and the defendant to appear, for which you pay 1.
4. 6. 11. for the King's duty, and for the rule 4.
and 4. on file you file the bill in the probatorioy's office r which you pay 4. 4. And heretofore it was not neces-
sary to give the defendant any other notice of filing such bill against him than the calling him in court as aforesaid by the
cries, which, as all attorneys of the court were suppos-
ed to be personally present in court during the sitting there-
of, was then thought to be sufficient notice. But many
attorneys having been struck off the roll on forjudged for
ill Conduct of another attorney, and are in the greatest
more parts of the kingdom, that it was impossible for
them to have notice time enough to give order for their
appearance before the rule (which was a four day rule)
was expired, this practice is altered; and now,

Where a bill shall be filed against an attorney of the
court, no forjudger shall be called for want of atten-
dance, if the action be laid in London or Middlesex,
and the attorney resides within twenty miles of London,
until four days after notice in writing of filing such bill be
given to such attorney or his agent, or left at his usual
place of abode, and a rule given for such appearance as
above; and any attorney or his agent residing in London
or Middlesex be called in eight days after such notice
filed shall be given in manner as aforesaid, and a rule to appear; the said days to be exclu-
sive of the days of giving such notice. Hil. 11 G. 2.

Forlie, Terra temporaous, vel capitata, A head-
land, or (as they vulgarly call it) lade land. Cowell.
edit. 1737.

Forlie, Forisia, Signifies a great or vast wood; in French
fien foreir & forinoe, in Latin fores altissimi & fab-
ner. Such woods are written upon in the Common Law, as Forijs of issis ubi fove inchoate vel
chitale, with whom were several others. Some do
say it is called Forisia quiae feruium stabilius vel tuo manu
foraim. Mowro in his First Law, cap. 1. num. 1.
thus define it. A covert is a territory of woody

grounds, and stantish poyars, privileged for wild bough
and
and fields of forest, cloths, and warren, to rest and abide in the same peace and quiet. For this reason, and as a precaution against the law that if you trespass, it is fined and marked with unremovable marks, marks and boundaries, either known by master of record, or by any person of the parishes, and also replenished with wild beasts of venery or chase. And with great courts of vert, for the purpose of the field with beasts to know their charge, and for the preservation and marking of which field place, together with the vert and venison, there are certain privileges and offices belonging only to the same. The manner of making forfeits, as the same author well set forth, cap. 2. num. 2. in this, the King holds out his commendation and approbation to certain discreet persons, for the view, perambulation, meering and bounding of the place lie mindeth to be a forest; which being returned into the Chancery, proclamation is made throughout all the three where the ground lieth. That none shall hunt or chase any manner of wild beasts in that precinct, without the King's special licence; after which, he appointed ordinances, laws, and officers fit for the preservation of the vert and venison; and so it became a forest by matter of record. The properties of a forest are those in particular: first, A forest, as it is truly and strictly taken, cannot be in the hands of any private man: the same as being because none hath power to grant commination to a justice in the eye of the forest but the King, cap. 24. num. 1. The second property is the court; as the justiser, fest every three years; the fines moneys three every year; and the attachment one every forty days. Idem, cap. 24. num. 1. But private persons are the officers belonging to it, for the preservation of the vert and venison: As first, The justices of the forest, the warden or keeper, verderers, foresters, criers, regarders, bailiffs, headles, and such like, which you may see, and their duties, in Manwood, cap. 21. num. 1, 2, 3, 4. And the chief party of the officers is the forest court, as being directed to that, and to take care that the sons William Rufus would hang a man for taking a doe, and for a hare he made him pay twenty thyllings, and ten thyllings for a cony. Eadmerus, lib. 2. p. 48. mention that the same Rufus caused fifty rich men to be apprehended, and accused them of taking and killing his bucks, which they denying, they were to come themselves by the fire ordine, &c. And Hen. 1. made no distinction between him who killed a man or a buck, and punished those who destroyed the game (though not in the forest) either by forfeiture of their goods, or loss of limbs: But Hen. 2. made it only imprisonment, a time. Hen. 3. R. 1. revived the old laws for punishing those who were convicted of hunting in the forest, (viz.) that they should be gelt, and have their eyes pulled out. But that King afterwards abolished this punishment, and appointed such offenders to abide the realm, or be committed, or to pay a fine. Ed. 1. appointed this punishment, but that they should be three years at horn and limb. The historians of those times tell us, that New forest was raised by the destruction of twenty-two parishes, and many villages, chapels and manors, for the space of ten years together. This was done to discharge to God, that several of those Princes came to unintly ends in that very forest; and particularly that Rufus was there shot by Tufrel; and before him, Richard, the brother of Hen. 1. was there killed by a folder; and Henry, who was nephew to Robert, the eldest son of the Conqueror, did hang like Dyson in the boughs of the forest.


Perfons refining out of the forest, not bound to attend the common summons, C. de F. 9 H. 3. 3. ft. 2. c. 2. Waste, purpresse, and affaire, not to be made without licence, C. de F. 9 H. 3. 3. ft. 2. c. 4. Regards and lawing of dogs to be as accused, C. de F. 9 H. 3. 3. ft. 2. c. 5. 6. Swainmotes to be held but twice in a year, C. de F. 9 H. 3. 3. ft. 2. c. 8. Scoldes and gatherings restrained, C. de F. 9 H. 3. 3. ft. 2. c. 7. 25 Ed. 3. 9. 3. ft. 2. c. 7. Punishment of killing King's deer, 9 H. 3. 3. ft. 2. c. 10. Noblemen going to the King may kill deer, 9 H. 3. 3. ft. 2. c. 11. Who may take toll, and of whom, 9 H. 3. 3. ft. 2. c. 14. Pleas of the forest how to be attacked and held, 9 H. 3. 3. ft. 2. c. 16. Owners of purlicue not to have common, unless they will have their grounds re-united to the forest, Ordin. Forst. 33 Ed. 1. 8. 5. How prelentments shall be made of offences in the forest, Ordin. Forst. 34 Ed. 1. 8. 5. c. 1. The justices in the forest shall name the officers except verderers, Ordin. Forst. 34 Ed. 1. 8. 5. c. 2. Ministers of the forest shall not be put in juries out of the forest, Ordin. Forst. 34 Ed. 1. 8. 5. c. 3. Punishment for excess in the forest, Ordin. Forst. 34 Ed. 1. 8. 5. 4. Common restored in the forest after perambulation, Ordin. Forst. 34 Ed. 1. 8. 5. c. 6. The punishment for offences in greenhe, Conforf. & Affis. Forst. inclut temp. sed. 4. In cutting timber, ibid. fett. 3. Concerning assault and purpresse, ibid. fett. 4. For offences in hunting, ibid. fett. 7. &c. The manner of making agiment and pannage in the forest, ibid. fett. 14. Concerning cattle trespassing, ibid. fett. 15. Permons unduly imprisoned by the ministers of the forest, shall have a domine repugnante, 1 Ed. 3. 9. 3. ft. 2. c. 8. Perambulation to be done in time of King Ed. 1. 1 Ed. 3. 9. 3. ft. 2. c. 1. The owner of woods may freely take his elfowers, 1 Ed. 3. 9. 3. ft. 2. c. 2. Forester's gathering nothing without content, 25 Ed. 3. 9. 3. ft. 5. 7. General pardon of offences of vert and venison, 43 Ed. 3. 9. 3. c. 4. Indemnations of the swainmote to be without fees, 46 Ed. The jury shall give their verdicts of trespass in the forest, in the same place where they receive their charge, 7 R. 2. c. 3. None shall be imprisoned within the forest without indenture or mainlentine, 7 R. 2. c. 4. The
The owner of a wood, after cutting it, may inclose the
firing for seven years, 22 Ed. 4. c. 7.
Discharge of the offices in the foreft of Inglewood, 4 H. 7. c. 6.
Opofitions in the forefts in Wales prohibited, 27 H. 8.

The King fhall have chace and war in the grounds of Hampton-Court, 31 H. 8. c. 5.
The juftices of the forefts may make deputies, 32 H. 8.

The forefts reftained to the known bounds of 21 Jac. 1. 16 Car. 1.
No place shall be deemed a foreft but where courts have been held or verdurers chosen within 60 years before the reign of King Charles 1. 16 Car. 1. c. 16. felt. 5.

Commissioners to affertain the bounds of forefts, 16 Car. 1. c. 16. felt. 6.

Owners of tenements, &c. to enjoy ancient common, 16 Car. 1. c. 16. felt. 9. The bounds of the foreft of Dean aftertained, 20 Car. 2. c. 3.

Saving of right of common, 20 Car. 2. c. 3. felt. 11.

And of miners, 20 Car. 2. c. 3. felt. 12.
Coal-mines, &c. for what terms to be leased, 20 Car. 2. c. 3. felt. 18.

For preferring timber in New foreft, 9 & 10 W. 3. c. 36.
Right of common, &c. how to be enjoyed, 9 & 10 W. 3. c. 36. felt. 7.

Warrants of chief juftices in eyre or of the foreft exempted from flamp duty, 10 Ann. c. 26. felt. 14.
Penalty on officers of forefts and the like, 5 Geo. 1. c. 15. felt. 5.

Keepers, &c. may feize inftuments used in unlawful cutting of trees, 4 Geo. 3. c. 31.

Foreflegant, (Eius fitus de thelone & pagfliae, & de foreflegant, & thelones aquarum & viarum foreftam mane contingatium. Charta 18 Ed. 1. m. 10. n. 30.)
Seems to signify some duty or tribute payable to the King's forefts, as chaminage, or such like. It may likewise be taken for a right to use the forfls, or a payment for the right, or rather a taking of reasonable efleers there. Cowell, ed. 1727.

Foreftallings, (Viam obstruente, from the Sax. fars, i.e. out, and file, signifies the buying or bargaining for any corn, cattle, or other merchandise, by the way, before it comes to any market or fair to be sold; or by the way as it comes from beyond the seas, or otherwise, toward any city, port, haven, or creek of this realm, to the intent to sell the same at a more high and dear price. 52 H. 3. flat. 6. Whit. part 2. Symbol. cit. Indictments, felt. 64.) Cowell.

1. Of the offences of forftalling, ingraving, and regrating by the Common laws, (that is, by the common customs of the realm, before any act of parliament was made concerning them,) and how punished.
2. The statutes against forftalling, ingraving, and regrating.
3. Cases adjudged upon these statutes.
4. Pleasings.
5. Of the offences of forftalling, ingraving, and regrating by the Common laws, (that is, by the common customs of the realm, before any act of parliament was made concerning them,) and how punished.
All endeavours whatsoever to enhance the common price of any merchandise, and all kinds of praclices which have any apparent tendency thereto; whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any such like devices, are highly criminal at Common law: And all such offences anciently came under the general notion of forftalling; which included ingraving, regrating, and all kinds of offfences of this nature. 1 Hawk. P. C. 234. 43 S. 38. 3 S. 195. 196.

And forly there can be no atempt of this kind, but must be looked upon as an high offence against the public; 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, which they are in the same market very much in need of. This practise especially is extremely opprobrious to the poorer sort, and cannot but give just cause of complaint to the rich. 1 Hawk. 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 gross, and sell the same in grofs again; because, by such means, the price will be inhaunted; for the more hands any merchandise paffeth through, the dearer it must grow; because every one will make his proffit, and no man will sell or buy at a lower price than he can make his proffit. 1 Hawk. P. C. 234. 3 S. 195. 196.

H. P. C. 152.
And as to the manner whereby offences of this kind are punishable by the Common law, it is said, that, by an ancient statute, the offender was to be grossly amerced for the first offence; for the second, to be condemned to the pillory; for the third, to be imprisoned; and for the fourth, to be compelled to abjure the will: And there seems to be no doubt, but that, at this day, all offenders of this kind are liable to a fine and imprisonement, answerable to the heinousness of their offences, upon an indictment at Common law. 1 Hawk. P. C. 235. 3 S. 197. H. P. C. 152.

2. The statutes against forftalling, ingraving, and regrating.

Stat. 5 Hen. 3. c. 8. 6. felt. 1. First, Six lawful men fhall be sworn truly to gather all measures of the town, viz. bafhefs, half and quarter bafhefs, gallows, pottles and quarts, as well of taverns as of other places: Measures and weights, vin. pounds, half pounds, and other little weights, wherewith bread of the town, or of the court, is weighed: and upon every measure, bafhef, and weight, the name of the owner shall be written, and likewise they gather the measures of mills: After which, twelve men shall swear to make true answer to such things as shall be demanded of them in the King's behalf upon the articles here following; and such things as be secret, they shall utter secretly, and answer privy.

The reader of this fiction relates to the office of bread and ale; but so much of it as relates to the office of bread is repealed by flat. 31 Geo. 2. cap. 29.
Sel. 2. Allo, if there be any that fell by one measure, and buy by another; allo, if any do affe falsre, wine, or any measures; and if any butcher fell contagious flesh: Allo, they shall inquire of cooks that fetehe flesh, or fish, with bread, or water, or otherwise, that is not wholesale, or after that they have kept it so long that it lothe its natural wholesomefes, and then feehe it again, and sell it; or if any buy any flesh of frous, and then sell it to another; and also forefflers that buy anything before the hour, or that pass out of the town to meet such things as come to the market, to the intent they may sell the same in the town unto regrators. When a quarter of barley is sold for two thilings, then four quarts of ale shall be sold for one penny; when for two thilings and six-pence, then seven quarts for two pence;
pence; when for three shillings, then three quarters for a penny; when for three shillings and fix-pence, then five quarters for two pence; when for four shillings, then two quarts at one penny.

Oxen, for bakers, &c. And publick.

[See they upon and or, and the publick.

The Mayor, or those that had the care of the city, and receiving the rich; and, by that means, goeth about to sell the said things much dearer than he that brought them; who cometh about merchant-strangers, and offereth them his help in the case of their wares; and informeth them, that they must sell their wares cheaper than they meant to have done: He that is convicted thereof, the first time, shall be arraigned, and shall lose the thing so bought, according to the custom of the town; he that is convicted the second time, shall have judgment of the pilory; the third time, he shall be imprisoned and mulcted. And motions, be still above the town, and likewise that they give them counsel, help, or favour.

Stat. 23 Ed. 3. c. 6. Butchers, fishmongers, re- grators, bakers, brewers, bakers, poulterers, and other sellers of victuals, shall be bound to sell the fame for a reasonable price, and not to lend any victuals, nor the parts thereof, and thereof be convicted, for so by the county, wapentake, titheing, or such other the King's courts, as appears by Stat. 23 Ed. 3. c. 4. If he shall pay double the fame that he received to the party dammified; or, in default of him, to any other that will sue; and the mayor, bailiffs or others, and the officers, shall have power to require: And in case the mayor and bailiffs be negligent, and be the executors before the justices af- firmed, they shall pay the treble of the thing sold to the party dammified; or, in default of him, to any other that will sue, and be grievously punished towards the King.

Stat. 35 Ed. 3. b. 4. & 6. The forefellers of wines, and other victuals and merchandizes that come to the towns of England by land or by water, if they be thereof atta- cked, shall be sent before the mayor, bailiff or justice, thereto assigned, or elsewhere in the King's court, and if they be attained at the King's suit, the things forefalled shall be forfeited to the King, if the buyer hath made good to the seller: And if he hath not paid the price of all but as the said shall incur the forfeiture of as much as the forefalled goods amounted to; and if he have not, then he shall have two years imprisonment and more, at the King's will: And if he be attained at the suit of the party, shall have one half of such forfeit, or the price, of the King's gifts, and the King the other half. Confirmed by 2 Ric. 2. c. 4. cap. 2.

Stat. 27 Ed. 3. c. 11. All merchants that bring their wares to the towns, cities, or ports, within the realm, may safely sell them; and no person shall go by land or water towards such wares, to forefellar them, or give any price for them before they come to the port, nor enter into the things for such case, till the merchandise be sent to land to be sold; upon the pains 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 king and queen, signed by the said king, in which of the said fables were removed by Ed. 3. and H. 4. [See flat. 2 H. 5. c. 1. flat. 4. and 2 H. 6. c. 4. & 3 H. 6. c. 4. concerning the flat, in the statutes at large] the penalty of death in the flat third article is also repealed by 38 Ed. 3. c. 1. cap. 6; but the forfeiture of the third article of the third article of the third article, viz. the pains of felony, is not of such magnitude as the said third article.
FOR

Revised, continued, and confirmed by 22 & 23 Car. 2,
exp. 31. 195; which is now expired. Query. Therefore,
is this act now in force?

Stat. 3 of Ed. 6, cap. 21. sec. I. No person shall
buy to fell again, any butter or cheeses, unless he fell the
same again by retail in open fhop, fair, or market, and
does not in good and due form of value; half to the King,
and half to him that will fue.

Sec. 2. This act shall not extend to innholders or vic-
tuallers.

Sec. 3. Provided that the word retail, mentioned in
this act, shall be expressly understood when a weight of chee-
fes, [viz. 25 pounds, in some places 256, in others 330.
Dalton's Country Journeys, cap. 112.] or a barrel of butter,
or lefs quantity, and not above fball be fold, at any time,
to any person in open fhop.

But the principal statute relative to forfeftalling,
in-groving, and regrating, is the 5 & 6 Ed. 6. cap. 14.
which is as follows.

Stat. 5 & 6 Ed. 6. c. 14. Albeit diven good fhaputes
heretofore have been made against forfeftallers of mer-
chandize and viuals, yet for that good laws and fhaputes
against regrators and ingrovers of the fame thinges have
not been herefore sufficiently made and provided, and
also for that it hath not been properly known what
ftaple fhould be taken for a forfeftaller, regrover, or in-
grover, the faid fhaputes have not taken good effect,
according to the minds of the makers thereof: Therefore,
be it enacted and declared by the King our Sovereign
Largh, and the Lords Spiritual and Temporal, and the
Commons, in this prefent parliament
assembled, and by the authority of the fame, that what-
soever person or persons, that after the fift day of May
next coming fhall buy, or caufe to be bought, any mer-
chandize, viuals, or any other thing whatsoever, coming
by land, or water, or by market, fair, or fair, to be
fold in the fame, or coming toward any city, port, ha-
ven, creek, or road of this realm, or Wales, from any
parts beyond the fae, to be fold, or make any bargain,
contract, or promife, for the having or buying of the
fae, or any part thereof, fo coming as is aforefaid, be-
fore the dail merchandize, viuals, or other things, fhall
be in the market, fair, city, port, haven, creek or road,
ready to be fold; or fhall make any motion by word,
letter, meffage, or otherwise, to any perfon or perfon,
for the inhauncing of the price, or dearer felling or any
thing or things above mentioned, made, madet,ephir,
and the perfon or perfon felling, or being the perfon or
perfon felling coming to the market or the fair,
to affina, or forcaer to bring or convey any of the
things aforefaid, to any market, fair, city, port,
haven, creek or road, to be fold as is aforefaid;
fhall be deemed and taken, and adjudged for a forfeftaller.

Sec. 2. Further it is enacted, EX. That whatsoever
perfon or perfon, that after the fift day of May
fhall by any means regulate, obain, or get into his or
their hands or poffeifion, in a fair or market, any corn,
wine, fish, butter, cheese, candles, tallow,, sheep, lamb,
caffons, wine, pigs, geese, capons, hens, chickens, pi-
garons, lamb, or other dead viuals whatsoever, that fhall
be brought to any fair or market within this realm, or
Wales, to be fold, and to fell the fame again in any fair or
market held or kept in the fame place, or in any other
fair or market within four miles thereof, fhall be ac-
cepted, reputed, and taken for a regrover or regrator,
and the perfon or perfon, that fell the fame, shall be
forfeftalled, EX. That whatsoever perfon or perfon,
that, after the fift day of May, fhall introgro or get into his or their hands, by buying,
contracting, or promising take, other than by demifile,
grant, or lease of land or thile, any corn growing in the
fields, or any other corn or grain, or butter, cheese, fish,
or other dead viuals whatsoever, within the realm of
England, to the intent to fell the fame again, fhall be ac-
cepted, reputed and taken a unlawful introgroer or in-
grover.

Sec. 4. And if any perfon or perfon fhall, at any
time after the fift day of May, offend in any of the
things before recited, and being thereof convicted and
attained by the laws of this realm, or after the form
hereafter mentioned, fhall, for his or their offenc, have
or suffer imprisonment for the space of two months,
without bail or mainprize; and fhall also lofe and forfeit
the value of the goods, cattle and viual, fo by him or
them bought or had.

Sec. 5. And if any perfon lawfully convicted or at-
tempted to offend, or for any of the faid offences above
faid, be thereof effroen lawfully convicted or attempted,
then every perfon or perfon fo offending fhall have and
fuffer, for his or their faid offence, imprisonment by the space of one
half year, without bail or mainprize, and fhall lofe double
the value of all the goods, cattle and viual, fo by him
bought or had, and shall be declared, etc.

Sec. 6. And if any perfon, being lawfully twice con-
 victed or attempted of or for any of the faid offences, effroen
offend the third time, and be thereof lawfully convicted or attempted, that then every fuch perfon, for
the faid third offence, fhall be fet on the pithory in the
city, or the place where he fhall then dwell or have
habit, and lofe and forfeit all the goods and cattle that be
or they have to their own use, and also be committed to
prifon, there to remain during the King's Majesty's plea-
ture.

Sec. 7. Provided always, and it is enacted and declared
by the authority afofaid, That the buying of any fuch
barley, bigg, or oats, as any perfon or perfon (not for-
feftalling) fhall buy to convert it into malt or oatmeal, in
his or their own house or houses, and fo fhall be con-
verted in deed, or the buying of any fuch thing by any
fuch fishmonger, butcher or poultifer, as concern his or
their fuch house, or the rents or profits thereof, or the
violence (not forfeftalling) which fhall fell the fame again upon reason-
able prices by retail; or the taking of any cattle, corn,
grain, butter, cheese, or any other thing above mentioned,
referved without fraud or covin, upon any lease for term
of life or lives, yeare or years, hereafter made or here-
after to be made; or the buying of any wine or other
dead viual above mentioned, being apt and meet for
man's fuffenance, by any innholder or other viualller, to
fell the fame by retail within his house, or to any of his
neighbours for their fuffenance, for reasonable prices;
or the buying of any dried or falted fih, herrings or fard
(not forfeftalling) and fold for reafonable prices; or
the buying of any corn, fih, butter, or cheese, by any fuch
badger, lader, kidder or carrier, as fhall be affigned and
allowed to that office or doing, by three juflices of the
peace of the county where the faid badger, lader, kidder,
or carrier fhall dwell, which fhall fell or deliver in open
fair or market, or to any other viualller, or to any other
perfon or perfon, for the provision of his or their house
or houses, all fuch corn, grain, butter and cheese, as any
fuch perfon fhall buy or caufe to be bought, and that
within one month next after he fhall fo buy any fuch
thing, which fhall be bought without forfeftalling; or
eft that any common provision made, or hereafter to be made without fraud or
covin, by any perfon or perfon, of any of the things
abovefhaid, for any city, borough, or town corporate,
or for provision of viuals or viuals of any kind, cow or fort
within the King's dominions, without forfeftalling, which
fhall be employed only to that ufe and purpofe; or the
buying and providing of any of the viuals above men-
tioned, necefary and requisite for the furniture and pro-
viction of the inhabitants of Celcie, Gaffines and other the
cibility, or of the town of Berwick, Hyb
fland, or the marches of England against Scotland, which
without fraud or covin, fhall be transported and conveyed,
as foon as wind and weather may ferve, to fuch of the
places afofaid for the which the fame fhall be provided,
fhall not be in any wife deemed, adjudged, or taken any
effect without the grant of this act.

Sec. 8. And it is also further enacted by the authority
afofaid, That if any perfon or perfon, after the fift
day of May next coming, having fufficient corn and grain
for the provision of his or their house or houses, and
fowing of any green or clover ground, for one year or more, or at any fuch time, for the change of his or their feed,
and do not bring to the fame fair or market, the fame
day, so much corn as he fhall fortune to buy for his feed,
and fell the fame, if he can, as the price of corn then
geoch
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 kud- living, and offer them again to sale, they shall be fined the price by the fame of five weeks in his or their own house, ground, term ground, or cell in such ground or grounds where he or they have the heritage, or common pasture, by grant or preemption; that then every person or persons so buying and selling again, shall lose the double value of the things so bought and sold again: the one moiety of all which forfeitures aforesaid shall be to the King, and the other moiety to him or them that will sue for the fame, in any of the King's courts of record, by bill, plaint, action of debt or information; in the which bill, plaint, action or information, no wager of law, effion or protection, shall be admitted.

Sect. 10. Be it further enacted, &c. That the juflices of the peace in every county within this realm, or Wales, at their quarter-fellions, shall have full power and author- ity aforesaid, and the like, to examine and determine all and every the defaults and offences perpetrated, committed or done contrary to this act, within the county where any such offender shall have been, by inquisition, pre- fement, bill or information before them exhibited, and by examination of two lawful witnesses, or by any of the Halls, the other moiety of the said forfeitures, 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 extractions of the one moiety of the for- feitures to be levied to the King's use, as they ufe to do of other fines, fines and amercements grown in the fef- fions of peace; and to award execution of the other moiety for the complainant or informer against the off- fender, by fier fatisca et capias, as the King's juflices at Westminster may do and ufe to do: And if any such con- viction or attainer shall happen after to be at the King's suit only, that then the whole forfeitures to be extracted 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 punifhed by virtue of this act, for any thing herein aforesaid, and that then the said person shall not otherwife be vexed, troubled, fued, or put to any pain or punishment for that thing wherefore he or they shall have been so pun- nished.

Sect. 12. Provided always, and it is enabled by the authority aforesaid, That it shall be lawful to every person or persons, which shall be affignd and allowed, by three juflices of the peace of the county where he shall dwell, thereunto, to buy (otherwise than by foreftalling) 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 faid dominion or dominions, if he or they shall, without fraud or coercion, flip or embar- k within forty days next after he or they shall have bought the fame, or taken covenant or promise for the buying thereof, and with fuch freedom and diligence as wind and weather will ferve to carry and transport the fame to fuch port or place, as his or their cockets shall de- clare; and there to dibrak, unladen and fell the fame, and do bring a true certificate thereof from one juflice of peace of the county, or mayor or bailiff of the town containing the place where the fame was bought or received, and of the customer of the port where such unloading shall be, of the place and day where the said corn or cattle shall be dibraked, unladen and felled, to be directed to the customer and comptroller of the port where the fame were embarked, the thing mentioned in this act to the contrary notwithstanding.

Sect. 13. And over that, that at all times hereafter, when wheat shall be common at the price of six shillings and eight pence the quarter, or under, oats or oats malted at the price of two shillings the quarter, or under, peafe or beans at the price of four shillings the quarter, or under, and rye or milwine at the price of five shillings the quarter or under; and which quarters shall be intended to be of London meafure; that then it shall be lawful to every person or persons (not foreftalling) to buy, engrofs and keep in his or their own hands, and offer for sale the kinds aforesaid, as without fraud or covin shall be bought at or under the prices aforesaid expressed; any thing in this act to the contrary notwithstanding.

Sect. 14. Provided always, and it be enacted by the authority aforesaid, That this act, or any thing therein contained, extend not to charge any person or persons, for any of the offences above mentioned, unless he or they be fucred 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 it be enacted by the authority aforesaid, That it shall be lawful to all and every the King's Majesty's subjects now dwelling or inhabiting, or that hereafter shall dwell or inhabit within one mile of the main fea, to buy all manner of fifth, if the same be bought, or forestalled; and no such actions for the kinds aforesaid, as without fraud or covin shall be bought at or under the prices aforesaid expressed; any thing in this act to the contrary notwithstanding.

Sect. 16. Provided always, and it be enacted by the au- thority aforesaid, That it shall be lawful to all and every known person and person or common drover or drovers, being licensed, authorized and allowed in writing by three juflices of the peace, whereof one to be of the quorum, of the county or counties where the fame drover or drovers shall be most abiding and dwelling, to buy cattle in any fuch counties or counties where drovers have been wont, in times past, accruably to buy cattle at their free liberty and pleafure, and to fell the fame as is aforesaid at reasonable prices, in common fairs and mark- etts, diiant from the place or places whereof he or they shall buy the fame, forty miles at the leaft, fo that the same cattle be not bought by way of foreftalling; this act, or any thing therein contained to the contrary in any wife notwithstanding.

Sect. 17. Provided always, That such licence of juflices of peace shall not endure above one year, unless the fame be yearly renewed by fo many juflices as is aforesaid.

Made per fcnt. by 5 Eliz. cap. 12.

By Stat.
and granted otherwise than is before expressed, shall from and after the said first day of May next coming be void and of none effect.

Sect. 6. And further, Be it enacted, &c. That the justices of the peace in the said general and open feoffments shall or may, in their discretion, take bond and surety, from time to time by recognizance, of such as shall be admitted or allowed hereafter a commutation of the moiety of any of the former feoffments and the court of land for the benefit of the Queen's use; and whereby, or by any other deed, or any other seigniorage, or of any other act, statute, law, ordinance, or any provision whatever hereunto, by or concerning the sale of butter or cheese in open shops, fair or market, or the providing or buying of any butter or cheese, shall be made void and, that the said act of 56 Ed. 6. against raffles and ingrossments shall not extend to any wines, oils, figars, spices, corants, or other foreign victuals imported from beyond seas, and salt only excepted.

Sect. 7. Provided further, That this act, or any thing therein contained, shall not be in any wise further construed to or be made a precedent of in any of the counties and liberties of Wiltshire, Camberland, Lancashire, Chester and York, or any of them, but that they may be hereafter have lawfully used to do any thing in this present act to the contrary notwithstanding.

This act was made perpetual by the 13 Ed. 12 and by the 1st of Hen. VII, and by the 6 Ed. 3, and by the 36 Ed. 6, and by the 4 Ed. 4. and by any of the said acts of 56 Ed. 6, and by any of any other act, statute, law, ordinance, or any provision whatever hereunto, by or concerning the sale of butter or cheese in open shops, fair or market, or the providing or buying of any butter or cheese, shall not be void and the said act of 56 Ed. 6. against raffles and ingrossments shall not extend to any wines, oils, figars, spices, corants, or other foreign victuals imported from beyond seas, and salt only excepted.

Sect. 8. Provided nevertheless, and Be it enacted by the authority aforesaid, That if the judges of the peace of any of the counties of this realm, and of the dominion of Wales, at their quarter feoffments of any of the said counties, shall declare and publish in open feoffments, that the traders aforesaid in butter and cheese shall forbear to buy any butter or cheese, for any time within the said county or counties, or within any parts or places of the same, that they may for and during the term of such restraint, the said traders in butter and cheese, shall buy any such butter or cheese, and sell the same again by retail, contrary to any of the aforesaid, shall not be freed of or from any the penalties of the said acts, but shall be subject to the same, as this act had never been made.

This act to continue unto the end of the first session of the next parliament.

This act was to continue indefinitely by 3 Cor. 1. c. 16 and 1 Ed. 1. c. 1.

By the 15 Cor. 2. c. 4. sect. 4. When the quarter of the hundred or market of any of the said feoffments do not exceed forty-eight, rye thirty-two thhillings, barley or malt twenty-eight, buck-wheat twenty-eight thhillings, oats thirteen thhillings and four-pence, and peas or beans thirty-two thhillings, any person (not forfailing, nor for selling the same again in three years more) may buy four bushells, at or under such price, and lay it up, and sell the same again without incurring any penalty.

But the 31 Ed. 5. sect. 5. (which omits, that informations for offences against penal statues must be laid in the proper county) is provided, that, nevertheless, an information for any of the said statute, law, or any inquicition, ingraining or regreting, where the penalty shall appear to be twenty pounds, or above, may be laid out of the proper county, and in any other county, at the pleasure of the informer.

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; but that they may and every of them shall and may lawfully affign and bequeath privileges to the profit of the said city or town corporate, in such manner and in such form as they may lawfully have done before the making of this act.
and fale, shall not be paid within five days after the making any such distresses and fale; rendering the overplus, if any, to the owner thereof, upon demand, after deducting the reasonable charges of every such distress and fale: And if any such distress and fale be made, goods or chattels within the jurisdiction of such justice or justices, whereon the money forfeited can be levied, any justice or justices within whose jurisdiction any such offender or offenders shall be, shall and may issue a warrant or warrants, under his hand and seal, or their hands and seals, on the application, or on the behalf, or on behalf of such offenders, and the sheriffs, or their informers, to apprehend every such offender and offenders, and to commit him or them to some publick prison, or house of correction, of the county, division, city, town, or place, in which any such offence shall happen: and there to remain 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 forfeited: And if any wits or witnesses shall appear, or be brought by any warrant, before such justice or justices, shall refuse to be examined, or to have the proceedings to be examined, may be committed, by any such justice or justices, to some prison of the county, city, or place, where such wits or witnesses shall make default, for any time not exceeding ten days from the time of every such commitment, as any justice or justices shall think fit.

Sec. 16. Provided always, That if any person or persons convicted of any offence punishable by this act, shall think him, her, or themselves aggrieved by the judgment or determination of any such justice or justices as aforesaid, such person or persons may appeal against any sentence or order made by any such justice or justices, or any such determination, to the general or general quarter-court of the peace of the county, city, 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-court of the peace for any such county, city, or place, shall be held within six days after such conviction: And if any such general or general quarter-court of the peace, shall happen to be held within the said space of six days next after such conviction, then it shall be lawful for any such person or persons to appeal against such judgment or determination to the justices at the general or general quarter-quell of the peace of the county, city, or place, in which any such conviction shall have been made, which shall be held for any such county, city, or place, next after any such conviction: But the party or parties who shall think fit to appeal shall, before any such appeal shall be received, enter into a recognizance of two thousand pounds, or sufficient sureties, before and at the time of any such appeal as aforesaid, in double the sum which such person or persons shall have been adjudged to pay or forfeit, to prosecute every such appeal with effect, and to be forth-coming to abide by, and obey the judgment and determination of the justices at any such general or general quarter-court of the peace on every such appeal; and shall also give three days notice in writing, of every such appeal, to, or before the name of the usual place of abode of the person or persons who shall prosecute to convict the party or parties so appealing: And the justices of the peace at such general quarter-court of the peace, are hereby authorized and required, on every such appeal being brought, to inquire into 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 determination of such court of general or general quarter-courts of the peace on every such appeal, shall be final and conclusive to all parties thereto appealing; and no certiorari shall be allowed to remove any such proceedings or determination.

Sec. 18. Provided always, and it is hereby further enacted, That any inhabitant of any parish or place in which any
any offence shall be committed against this act, shall, notwithstanding such inheritance, be good and competent witness.

Sec. 19. And be it further enacted by the authority aforesaid, that if any plant, action or suit shall be commenced or prosecuted against any person or perfons, for what he or they shall do or have done in pursuance or in execution of this act, the same shall be commenced within six months after the offence committed; and shall be had in the county or city where the offence shall have been committed, and such person or persons be 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 defendant shall be nonsuit, or if to continue his action, after 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 the statute.

Apples. Information in the Exchequer upon the statute of 6 & 7 Ed. 6. for the ingrossing of apples, being dead viuall, or being a contamiuer; and it was therefore demurreed, that it was out of the statute, and is not such viuall 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 Cale fayd, 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 any such proviso for apples; therefore it never was intended to be restrained; and for that cause the judgment was affirmed. Cro. Jao. 214.

Mich. 6 June 1.

Upon an inditement preferred 22 Corv. at the assizes at Knares, against one ingrossing apples, pears and cherries, framed upon the statute made against engrossers of viu- tuals, the defendant pleaded and was found guilty; formerly judgment was arrested, and the counsel heard. Edward Johnfon of the Inner Temple pray’d for judgment for non-assistance, being the first being a contamiuer; and it was proved that he had been formerly; and that upon these reasons: 1. Because that apples, pears and cherries are viuuals within the statute; and that because the statute is not to be abridged; and the statute of 2 Ed. 6. made concerning forfeitures, expanded this statute, that apples, pears, and cherries were forfeitures, for the frauds were calle’d fellers of viuuals; and for Boys his case that is objected that apples are not viuuals, it is not to be meant of all sorts of viuual in a general acceptation, and without doubt ingrossing of them is ingrossing at the Common law. Salt is no viuual per se, nor is uedef as viuual in any country; yet it is there said to be viuual. But apples are viuual per se; no ciuallmongers are calle’d viuualbers by their charters. Roll, Chief Justice fayd, that 4 Jac. apples were adjudged no viuuals; and after, upon a writ of error, this judgment was affirmed in the Exchequer-Chamber, and this therefore is not to be rejected, but laid over; and if they should be adjudged viuuals, the trade of the ciuallmongers would be destroyed; and for salt, it is no viuual, but a preservation of viuual; and hops were adjudged to be no viuual, 20 Jac. upon a reference made to the jury. Neither are apples to be accused as [hi]tters of the liberty, etc., notwithstanding to be calle’d fellers of viuuals; and if, when the statute would be destroyed. Ask, Chief Justice held, that apples are viuual within the statute, because they are better than salt; Ask, Chief Justice held, that apples are viuual, but not within the statute; for a statute cannot alter by reason of time, but the Common law may: It was adjudged. Syl. 190. 1. 1649.

Barley and beans. In an information, because the defendant, between the 20th of July 12 Jac. and the 4th of July next after, at Wilsington, in the county of 

Middlesex, did buy, ingros and obtain in his hands, by buying and contractting of divers persons unknown, three hundred quarters of barley, of the value of each quarter, and for the value of twenty shillings every quarter, ad ronundam contra formam flatuu, &c. whereas upon an action acceded to the King and the informer, to have of the defendant four hundred pounds; viz. the value of the barley and beans, whereof the informer pray’d a moiety, &c. The defendant thereupon or that the defendant was guilty, &c. May 13 Jac. and the 4th of July next after, pleaded Not guilty. And as to the informations between the 20th day of July 12 Jac. and the 22d of May next after, the defendant, faith, that before the exhibiting of the said informations, the 22d of May, 13 Jac. One Robert Reshot 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 ingros 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 ronundam contra formam flatuu, &c. And did aver, that Stephen Bolon, named in the first information, and Stephen Bournes, named in the second information, were men, and not divers; and that the said three hundred quarters of barley, and a hundred quarters of beans, specified in the last information, are parcels of the storeaid barley and beans in the first informations, and petit judicium of the last information, the said first information depending determined, &c. Upon which plea Mr. Attorney General in law. And I conceive that judgment ought to be given to the King and the informer, for two reasons. The offence in the first information is alleged to be between the first of June 12 Jac. and the 22d of May 13 Jac. So that, for any thing appears to the contrary, this may be done. And the 22d of May, 12 Jac. was found, that the first day of July next, which is not part of the time contained in the last information; and then, that is no answer to the ingrossing between the 20th of July 12 Jac. and the 22d of May next, unless he had avered in fact that it was within the time contained in the last information. And the 22d of May 13 Jac. is not answered to all; and it may be that the ingrossing was on that day; for the plea of Not guilty goes only between the 22d of May 13 Jac. and the 4th of July next: and the last information is between the first of June 12 Jac. and the 22d of May, for the plea of Adversary is that the time is partly contained in the last information. The first information is for ingrossing of beans and peas, being a mixt grain; and the last information is for beans only; and beans by themselves cannot be parcel of beans and peas, being a mixt grain. And after judgment was given for the King and the informer, and that principally for the second exception. Brid. Rep. 48. 49. Hill. 13 Jac. 1.

Butter and cheese. Information in the Exchequer for ingrossing butter and cheese. Upon Not guilty pleaded, it was found against the defendant; and a writ of error being brought in the Exchequer-Chamber, the exceptions, amongst others, was, that the judgment is upon which plea Mr. Attorney General in law. And I conceive that judgment ought to be given to the King and the informer, for two reasons. The offence in the first information is alleged to be between the first of June 12 Jac. and the 22d of May 13 Jac. So that, for any thing appears to the contrary, this may be done. And the 22d of May, 12 Jac. was found, that the first day of July next, which is not part of the time contained in the last information; and then, that is no answer to the ingrossing between the 20th of July 12 Jac. and the 22d of May next, unless he had avered in fact that it was within the time contained in the last information. And the 22d of May 13 Jac. is not answered to all; and it may be that the ingrossing was on that day; for the plea of Not guilty goes only between the 22d of May 13 Jac. and the 4th of July next: and the last information is between the first of June 12 Jac. and the 22d of May, for the plea of Adversary is that the time is partly contained in the last information. The first information is for ingrossing of beans and peas, being a mixt grain; and the last information is for beans only; and beans by themselves cannot be parcel of beans and peas, being a mixt grain. And after judgment was given for the King and the informer, and that principally for the second exception. Brid. Rep. 48. 49. Hill. 13 Jac. 1.

Barley and beans. In an information, because the defendant, between the 20th of July 12 Jac. and the 4th of July next after, at Wilsington, in the county of 

Corn. An information was, upon the statute of 5 & 6 Ed. 6. for buying of feed-corn, having sufficient of his own, and not bringing so much into the market of
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, although the contract be made in a house open out of the market, and delivered to the venede out of the market, yet it is within the statute. And in the argument of that case, Alderson said, that the market shall be paid, 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 in London ought to be in a thing which is open to the street, and not in chambers or inward rooms, otherwise the property is not altered. And so it is of all statutes, in open markets. And the recorder of London said, that such was the custom in London. 

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Outs. In debt upon the statute of 5 & 6 Ed. 6. cap. 14, concerning ingrossers, &c. for ingrossing 2000 quarters of oats; after all debt paid, it appeared in evidence upon a trial, that they were foreign oats, and exempted by the 13 Eliz. c. 13, as to reign violable, to be ingrossed and sold, and that the defendant was a licensed gather, and by that too exempted from the nature of the statute. And it was held by Hild, chief baron, that any thing in the same statute upon which the fact is commenced, may be given in evidence; but if it be in another statute, it must be pleaded; but that since the statute 21 Jac. 2, upon the general statute, any thing may be given in evidence in excuse of the party, and thereupon the plaintiff was nonsuit. 


Trin. 24 Car. 2.

Salmons. One was indicted and convicted, by the name of Davies, fishmonger, for ingrossing and buying retail salmon, gros tenet & venditit; it was objected, that every fishmonger, by the statute might buy and sell at pleasure; but the contrary was adjudged if at unreasonable prices; and the books say, that ingrossing fish going to market is punishable. And per Gales, if a man buys retail, and sell them at unreasonable prices, that is within the statute. 


Salt. It was resolved, Mich. 44 & 45 Eliz. by the justices and barons of the Exchequer, upon conference between them, that salt is a virtual, and the buying and selling thereof is a violation of the statute 5 & 6 Ed. 6. for it was not only of necessity of itself, but of necessity for health of man, but it forsooth and maketh wholesome beef, pork, butter, cheese, and other victuall. 

3 Inf. 156. 

Information for ingrossing one hundred bushells of salt, to fell again, contrary to the form of the statute of quinto Edwardi Sexti, cap. diebus quartis. Upon the declaration it was demurred; and argued by Nay and Alnof, that this information is not maintainable: For, because ingrossing is no offence in itself, nor falling and regrating were not in themselves offences punishable before the statute; nor is ingrossing in itself unlawful, but by consequence, or by reason of the things bought and made dearer, which ought to be shown in the indiciement or information. Secondly, Because it is not any virtual within the words or intent of the statute; for it is not virtual, but only cardinamentum, and for preparation of virtual: And he cited a record, Psch. 16 Eliz. adjudged, that buying of barley, and converting it into meal, and selling it, was no offence punishable in a mayor who sold it, nor made him to be a violater (the mayor being prohibited to sell victuals); and Vincenzo Jacobi adjudged likewise, that hops were not virtuals within the statute; And in another record, near buying of apples to fell again was not within the statute of 5 Ed. 6. and where it is mentioned, 13 Eliz. cap. 25; that the statute of 5 Ed. 6. doth not extend to buying of oyle, wine, and other merchandise, except fish and fiale; it is to be intended that was not in the point of ingrossing; but for forefalling and regrating, which is prohibited. And it would be a great inconvenience, if salt should be within the law to be virtuals, to be prohibited to be ingrossed; for then it should extend to those that carry victual in wains to be sold, and would enforce that no salt be bought by the bushell or peck, at shipps or falt pits, which the law never intends by it. And the law intends these things which are sold in great quantities, usually at every market in every county; as corn, cattle, butter, cheese, &c. But if any ingross all the salt, with an intent to fell it at his own price, and at unreasonable prices, which is agreed, it is contrary to the common law and if it be found, he is fisable, as appears by a record, Psch. 43 Ed. 3. rot. 19. sworn in court; whereupon it was adjourned. 


Where. The case fell, at the sessions of peace held at Norwich, 16 Jac. did inform, for the King and himself, that the defendant, being a grocer, the first of September then last past, at Norwich, did ingross and get into his hands, by being, contract or promise, of divers persons unknown, 470 quarters of wheat, each quarter at the price
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, to the jury find, that 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 on fields, or any other grain, butter, &c. or dead vitiates, 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 ingroffed. And as to the three hundred and eighty quarters of the said wheat, they found the defendant Not Guilty; and as to the two quarters residue, they found that the defendant, the first of September 10 Jac. and continuing afterwards till the 21st of August next following, at the said city, did use the art and trade of flour-making; and that he, on the 21st of September 15 Jac. did get into his hands, by buying, and not by devised or lease, twenty quarters of wheat, residue of the said four hundred, to the intent to convert the same into flour; and on the 30th of October in the same year did convert the same into flour; and the 21st of October did sell the same for several persons; and that the said wheat, being the residue of the 21st of September, was of price thirty-six shillings. But whether the defendant were guilty of the ingroffing 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 inserted into the King's Bench. which was brought against the defendant before the King and the informer. Bridg. 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 flour; it was resolved by three of the justices, (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 is this within the statute; for that is usual, and is no alteration, and therefore remains the same corn; but flour is altered by a trade or science, which is a mystery, and so it is not the same thing that it was. Gwill 154. Trin. 9. Jac. 2. 2 Brum. 128. &c. See 2 Brum. 128. &c. at large in The Laws against Forefellers, &c. p. 26 & 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 Lem. 39.

Indictment for forefelling, by buying fifth at Billingsgate; and held by Holt at nisi prius, that the party was Not Guilty; for Billingsgate was a market time out of mind; and so the party was acquitted; and by him, was it otherwise, all the informers were liable to prosecution. Note: This was at the instance of that company against a poor woman that cried fifth. 1 Stow. Rep. 393. Holt's Rep. 323. S.C. Mich. 3 W. & M. 128. &c. This information brought by the Attorney General against the defendant, founded on the statute of Edw. 6. for that he had fold cattle alive in Norfield 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, and the case moved, in behalf of the 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 side, it was endeavored to distinguish this case from those cases upon statutes, which give juries of peace in their proceedings the ordinary jurisdiction only; because this statute of Ed. 6. gives the juries power to proceed upon it, as well in a summary way, by examining two witnesses to the fact (which is an extraordinary jurisdiction) as by trial by
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Information for ingrossing cattle; the defendant justified as to a certain number under two several licences, without allowing how many by one, and how many by another, and was adjudged for the plaintiff. 


It was said by Hubbard, chief justice, and Winch, but Wartburton, counsel, that if a man hath a licence of forfaying upon the 5 Ed. 6. c. 14. he need only receive the statute 5 Ed. 6. in his pleadings, without pleading 13 Edw. 3., as the statute 15 Eliz. only qualifies the person. 

For. 27. Hil. 15 Jan. 1.

Information on 5 Ed. 6. for ingrossing corn; the defendant justified as to part, by licence from three justices of the peace, but did not aver his selling it above the licence. It was averred, that by such a verger, it being parcel of the statute, and not in nature of a condition sufficient, which is to be alleged by him that will take advantage therof. 2 Ed. Rep. 33. 10 Jac. 1. in B. R.

The defendant as spinster, alias the wife of William Fawer, was indicted on 5 Ed. 6. cap. 14. for ingrossing; in arrest of judgment, Symon excepted, that the being a feme covert, her husband ought to be joined, because a feme covert cannot ingross. Jones, for the plaintiff, that as Hob. 93. Mary and Hob.: the husband shall not be joined, because a feme covert is a woman, the alias dixit, and the wife of such a man, that such is a sufficient allegation, she is a wife, and so this doth not appear on record, 2. she is not chargeable without the husband, as Hob. 93. Mary and Hob.: And Dr. Hob.'s case, the statute only, which the defendant is charged with for ingrossing, gives only a penalty, and no criminal punishment, and the husband cannot be joined to the wife in an indictment, as in an action or information or for her concealment. 

Twijford doubted this alias dixit, void, albeit in criminal case: the alias be good, and the clerks agreed, that in indictments the husband is never named, but only in informations. 3. Twijford doubted the wife cannot be said to fall or in gros; but per cur. The wife may as well ingross and fall, as convert or ejct, which must be actually proving against the wife; and the court agreed t.o addition is never put in the alias dixit, but all conceived, that after verdict the man must be summoned, when the feme covert is convicted, and the usual, and does not necessarily imply she be a wife, but so called; and judgment pro rege nifi. Afterward, in the same term, Symon, for the defendant, that the being a feme covert, no judgment can be against her for ingrossing and selling one hundred of mackerel upon the statute, all the basis being her husband's, and the deth here sufficiently appear to be a feme covert by the alias dixit, which is as applicable to her as such, as otherwife, therefore shall be intended fuch; and not aliud: for the alias dixit is nothing, and the verdict had found her guilty, which they could not do to the feme covert, and this may be affigrated for error in fac, that she was covert; and judgment pro rege nifi; and after she was fined sixteen shillings, the value, Gr. 2. Keb. Rep. 468, 469, 479, 503. Hil. 20 & 21 Car. 2. in B. R.

Indictment for ingrossing upon 5 Ed. 6. exception was taken, that the individual is the same laid for for ingrossing, and the false in Serje. Ruled, that this is well enough on a special verdict. Comb. 3 Mesb. 1. jac. 2. in B. R.

An information on the 5 & 6 Ed. 6. cap. 14. for buying and selling live cattle, not having kept them the time the statute applies, was exhibited in this court. The buying and selling was alleged to be in Norfolk; and it was infinued, that the information ought to have been brought in Norfolk where the fact was done, and not in Middlesex; and that the statute of the 21 jac. 1. was made for the case 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 statute; and he cited Litch 102. 1 Sid. 380. 2 Keb. 340.

2 Vent. 8. Jac. 3. 3. Keb. 327. 4. Ch. 175. 3. Jac. 176. 191. 112. and now this Chief Justice said, ten judges had agreed in the following declaration: First, That the 21 jac. 1. cap. 4. does not extend to any offence created since that statute, so that informations on subsequent penal statutes are not restrained thereby; but that statute is as to them, as it was, respected. That the defendant, although she had been tried and convicted in a higher court, and no proceedings on penalties made before that date, must by force of 21 jac. 1. cap. 4. be laid, brought and prosecuted in the proper county where the fact was done, 1 Salk. 372.

Fitz was indicted for that he had ingrossed magnus et exiguus nomen locutorum fercum, de quibus dictum sum, with a design to make them deare, &c. and Mr. Hob. Eyre moved to quash it for the uncertainty, because they do not shew how much, &c. and he cited Cur. Car. 350. Abignan quintassamentum praetiiis et saecii, held ill. [See 2 Bouil. 317. 1 Roll. Rep. 134. and the case of The King and Bird, 18 Geo. 2. 1731.] and though 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 that he was to be indicted, did not fix, for how manyscore he had taken four-pence: and the indictment against Fuller was quashed. Id. Royn. 475. Tein. 11 Hil. 2.

Forfatarium. The forester, or keeper of a forest, attuned by the King as lead foresters; or warden of a whole forest, or of any part of the same forest, or of any land appertaining to the same forest, &c. as underforester. — Rer. praelipt quod annua illi quin beatis habent intra metas forestae Domino Regis, quod quodam idoneus forfuration in saecli futuris ille in item praecl pro futuris curam capere solvere forsforarium militium & altorum. Parochial Antiq. p. 177.

Forfiffer, (Forfatarius,) is a sworn officer of the forsets, appointed by the King's letters patent to walk the forests both early and late, watching both the vert and the venison, attacking and preventing all trespasses against them within their own bailiwick or walk, whole oath may be read in Grace, Sel. 251. and though theses letterss patent be ordinarily granted, but quandiu quae fene gessit, yet some have it to them and their heirs, and thereby are called forsoners in fee. Id. fol. 157. 159. By the same Gramm. in Latin, f. 175. Forfariarum femel. Cowell, ed. 1727.

Forfying and Forfing, (from the Sax. fore, aute, and fyrung, proudeter.) Est capio obstopariam, quum in facinis ab aliquo, fit prorsus minimus minister Regis et operis quo Regi sunt necessarium. Antecapio vel prevenior. — Est font quoti de vasivario, & de uitae & forsine & withings, &c. Charz. H. 1. Hob. Smiti Barth. Lond. an. 1135. Fleta, lib. 1. c. 47. Forfing quintistanti priori prisi fexion defutit. So that forfaging 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.

Forstetted. To set the conditions appointed for the sole of forstetted elates, 4 Geo. 1. cap. 8. 5 Geo. 1. c. 22, 23. 6 Geo. 1. c. 24.

Elate of John Elates. Esq; how forsetted and applied, 7 Geo. 1. c. 1. c. 28. Forsetted elates not unfold reverted in his Majestty, 9 Geo. 1. c. 19. fol. 15. 18.

Farther directions for the sole of forsetted elates, 13 Geo. 1. cap. 28. 1 Geo. 2. c. 21. 2 Geo. 2. c. 33. A fraudulent sole of Lord Dervauteswater's elate set aside, 5 Geo. 2. c. 23.

Beasts of the Dervauteswater elate applied to the support of Greenwic hospital, 8 Geo. 2. c. 29. 11 Geo. 2. c. 30.

Lord Widdrington's elate to be conveyed in trust for the creditors of the York Buildings company, 18 Geo. 2. c. 37.
For veiling forfeited estates in the crown, 20 Ge. 2. c. 41.

Eches on hargings and denunciations in Scotland, taken away, 20 Ge. 2. 50. fed. 11.

Certain forfeited estates in Scotland velled in the Crown unalienably, 25 Ge. 2. c. 41.

Forfeiture, (Forfetuturis, from the Fr. forfuit, tref- bus, transgressione, crime,) Signifieth rather the effect of transgressing a penal law, than the transgression itself; as forfeiture of echeates.

Forfeiture is a word often made use of in the law, and in Civil cases is usually applied to alienations and dispo- nations made by those who have but a particular estate or interest in lands or tenements, the remainder of which is in the hands of others.

Alfo the omission or neglect of a duty, which the party binds himself to perform, or to the performance of which he is enjoined by the law, and is upon the breach or neglect thereof called a forfeiture, that is, the advantage accruing from the perfor- mance of the thing are by this omission defeated and determined.
2 B. & R. 175.

In this sense of the word, the principal matters relating to forfeitures 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 forfeiture 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.

1. 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 after the attainder of high treason, although the lands are helden of another; for there is an exception in the case of felony, which saves the tenant's allegiance to the King; so that if he forfeits his allegiance, even the lands held of another lord are forfei- ted to the King, for the lord himself cannot give out lands but upon that condition. Ca. Lit. 8, 3 inf. 19.

Also upon an attainder 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 held; 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 in- gaged to serve the lord being forfeited to the King, and thereby his blood corrupted, so that no person could repre- sent him; and consequently dying without heir the lord is in by effect.
3 inf. 19.

In the lord can't come into the lands helden of him upon an effect 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 walkes.

And as to this, being the office of Prærogation Regis (17 Ed. 3.) it seems to have been generally helden, that the King has a right, not only to wafte 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 ancutly a right only of the thing itself, and not to wafte them in lieu of it.

As to lands whereof a person attainted of high treason died feised of an estate in fee, they are actually veiled 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, 217.

It is said, that the inheritance of things not lying in tenure, as of rent-charge, rent- feck, 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 that the profits of them shall be extended for it can't echeate, because it lies not in tenure; neither can it defend, because the blood is corrupted. 3 but. 19, 21. 2 Haw. 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 thereto; and that the lands were a tenament of the King, nor an use, (except where land had been fraudulently conveyed with an intent to avoid a forfeiture;) nor a condition forfeited before 33 H. 8. neither could land in tail be forfeited after the making of Wifden, 2. any longer than for the life of the tenant in tail, tile 26 H. 8. 8 Co. 2. 7 Co. 17. 3 inf. 19. 9 Kal. Abr. 34. Stamp. P. C. 187. Plow. 554. Dyer 289. pl. 55. Ca. Lit. 139, 327, 391.

The profits of lands, whereof one attainted of felony is feised 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 go to the lord.

Inf. 19. Fig. 166. Forfeiture 23. 4 eff. 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 Gevelind, be- cause the person is entitled more expressly by a custom of the attainer, and therefore disabled to have or hold any estate, or to have any property in any thing; and therefore if a perfon be feised in fee of a copyhold, and be attainted of treason or felony, the copyhold is in the lord without any preten- dment of the homage, because it is against the nature of a court baron to inquire of criminal matters or offences against the King and such homages are granted to another person of the lord, but often influenced by him; but if a copyholder be convicted of felony, and preferred by the homage, by a special custom, the effate may be forfeited to the lord; but this is only by the special custom, since the copyholder is preferred by the convion to hold the estate, as he is if he were at- tained; and therefore it is by the custom only that such forfeiture accrues, it must be in the manner which the custom has feit it, which is by the present- ment of the homage; but if a copyhold is granted for life, and by another copy it is granted to another person, or the copy to another person, after the death of the first copyholder, the former surrender, forfeiture, or other determination of the first estate; the first copyholder commits murder, and is thereby attainted, the King pardons the murder and the attainer, and all forfeitures thereby; in this case, he in the revion is intituled to the estate; for the King can't have it for the benefice of the tenure, since he can't be tenant at will to any perfon; and the lord can't have it, because he can't be tenant to himself; therefore the particular estate of tenant for life being extinguished, the revion immediately commences.

1 Bulf. 13. 2 Brend. 217. 1 Lex. 153. 2 Gell. 151. 2 Lea. 153. 2 Kble. 254. 2 Tens. 38. 5 Co. 117. Co. Top. sect. 53. Pelles. 615 to 621.

As to forfeiture of goods and chattels, all things whatsoever which come under the notion of a peronal effate, and which a man is intituled to in his own right, whether he be in his life or in his after birth, are forfeitable in the following cases:

The robbery of the King, for the trouble and charge he has been in at holding courts, and bringing the offenders to justice.


All personal things forfeited by waft of truth on the off- fender are as much forfeited, as if he had the legal inter- est, and therefore the forfeiture of such things is taken in another's name, or a lease made to another in truth for a perfon who is afterwards convicted of treason or felony; there are as much liable to be forfeited, as a bond made to him in his own name, or a leave in poftef- sion.
Alfo the trufť of a term granted by a man for the ufe of himself, his wife and children, £c. is liable in like manner to be forfeited, if fraudulently made with an intent to avoid a fubfequent forfeiture, but it fhall be forfeited fo far only, as it is referred to the benefit of the party himfelf, if made bona fide, whether before or after marriage, for good conftitution without fraud, which is to be left to a jury on the whole circumftances of the cafe, and fhall never be precluded by the court where it is not otherwise found, See 5 Co. 69, 60, 185, 153, 
77, 1 Lev. 279. Lane 54, 131. 1 Med. 16. Han. 
456. 1 And. 294. Royan. 120. 2 Rel. Abbr. 34. 1 
Rel. Abbr. 343. March 45, 88. 1 Sid. 260, 403. 1 
Keb. 909.

But the power of revocation of the trufť of a fettle- 
ment, or a grant to the granter is not liable to be forfeited, if it depend upon fomethinf personal to be done by 
the granter himfelf, as making the deed of revocation 
under his hand and feal. 2 Keb. 504. 1 Lev. 279. 1 
Med. 16. 38.

A man forfeits all fuch personal efface in the following in- 
fractions.

1. Upon a conftitution of treafon or felony, as is 
clearly agreed by all the books. 5 Co. 109. And there- 
fore a perfon convicted of mufidering, and making 
purfuation, as was the ancient practice, or burnt in the 
hand according to the prefent, tortures, and other 
offenders, not his lands, for the King hath loft a fubject, 
and therefore the party is punifhable, though in a more 
gentle manner than when there is a felfe and deliberate 
revenge. 5 Co. 110. But a perfon convicted of hereby 
forfeited neither lands nor goods, because the proceedings 
against him were only for offence ani/f. Doct. & Stud. 
lib. 2. cap. 29. Hale's P. C. 5.

2. Upon the coroner's inquifition taken on a view of 
a dead body, and finding him guilty either as principal or as 
accfly before the fact, and that he fled for the fame, 
whereby he forfeis his goods abfolutely, and the uffes of 
him, as fuch he be not acquired or pardoned. Stanwix, 
pl. 36. 5 Co. 110.

3. Upon a jury's finding that the defendant fled at 
the fame time that they acquifed him of an indifcretion of 
capital felony, or, as fome lay, of larceny, before uffces of 
ofee, £c. but fuch a finding excludes no forfeiture of the 
ufes of the land, because by the acciftual the land is 
difcharged; neitlier will it have any effeét to the goods, 
if the indifcretion were infufficient, or if the flight be 
depofited on a traverse, as all agree, may be 
taken to appear from what is faid, and that by a coroner's in- 
quifition, and fome lay, even to the goods. The is 
subjected to the flight, as of the particu/ars of the goods. 
Keila. 68. 5 Co. 110. Hale's P. C. 271. Stanwix. 185.

4. The goods of perfon ou/furred are forfeited to the 
Kine, for the rettining the inquiries of judge is 
he held to criminal in the eye of the law, that it is punifhed 
with lofe of goods fo long as the ou/zaffrayed flands in force. 
So if a perfon make decline till the award of an eecen- 
tric, either upon an appeal or indifcretion of a capital felony, 
he forfeis his goods, unless he was pardoned before the 
award was exa/fed; and it is holien, that the law is the 
ftane, as fuch be defenfe upon an indifcretion of petit 
larceny, and that wherever goods are fo forfeited, they are 
fayed by an acciftual at the trial; but by a reverfal of 
the award the eecen of the goods are fayed, whether fuch rever- 
fal be for an error either in fact or in law, as for the im- 
prifion of the defendant, or at the time the exadement 
was made. Parker v. Parker in the bill of attainder. 5 
Co. 110. 111. Finc. Corin. 181. Forfeiture 
pl. 13. 22 Aff. pl. 11. Or. Einn. 4. 72. Haul's P. 
C. 271. 34 Ed. 3. 17. 1 St. Abbr. 259. Or. Fett. 
404. 2. 1 Sir. Fett. pl. 6. If a man be found, £c. if a thief be killed in 
proceeds. 5 Co. 110. 111. Finc. Corin. 181. Forfeiture 
pl. 13. 22 Aff. pl. 11. Or. Einn. 4. 72. Haul's P. 
C. 271. 34 Ed. 3. 17. 1 St. Abbr. 259. Or. Fett. 
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C. 271. 34 Ed. 3. 17. 1 St. Abbr. 259. Or. Fett. 
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proceeds. 5 Co. 110. 111. Finc. Corin. 181. Forfeiture 
pl. 13. 22 Aff. pl. 11. Or. Einn. 4. 72. Haul's P. 
C. 271. 34 Ed. 3. 17. 1 St. Abbr. 259. Or. Fett. 
404. 2. 1 Sir. Fett. pl. 6. If a man be found, £c. if a thief be killed in 
proceeds.
ditions, fees, offices, rents, annuities, common, leases, and all other commodities, profits and hereditaments whatsoever they or any of them should, might or ought to have or receive in or upon them.

In the construction of these statutes the following opinions have been held.

1. That neither of these Statutes are repealed by the 14 Car. 2. 107.
c. 1, 2, 3, which enacts, "That no pains of death, penalty or forfeiture shall ensue to an offender, for doing any treason, perjury or other crime of treason, in any such case for which any sentence was heretofore made and in which the sentence was not final until within the statute of 25 Ed. 3. ordained and provided;" for the words, "other than such, &c., have been confined to the pain, &c., mentioned in the beginning of the sentence, but to the offences mentioned in the end. Staundf. P. C. 187. 3 Estl. 19. 11 West. 152.

2. That forfeits in tail are forfeited by force of these words in 26 H. 8. of any state of inheritance, which must be void, if they do not include forfeitures in tail; also land given to a man and his wife, and the heirs of their two bodies, are as much forfeited by his attainer as lands given of the intent to the heirs of his body. Staundf. P. C. 187. Co. Lit. 372, 391. 2 Dyer 322, pl. 27.

3. That neither a right to a writ of error to reverse any erroneous common recovery, nor a mere right of action to land in the hands of a stranger as of a disseinate, or of the heir of the disseinate, be limited to the time of the conveyance; but all former estates continue as much forfeited as lands in possession; yet the King shall not be adjudged in possession, by virtue of such a right, without an office, and a seisin facies or seisin on such office, for its words, the King shall be deemed in seisin without a seisin. Co. 4, 5, 6, 7, 8. 12 Dyer 125. 25 Car. 2. 389. 2 Cro. 428. 7 Estl. 13. Lit. Rep. 100. S. P. agreed.

4. If tenant in tail of the gift of the crown makes a feoffment in fee, and then is attainted of high treason, the right in the tenant is forfeited, for it could not be disseminated, because the reversion continued always in the Crown, and that it be put in abeyance by the feoffment, as to any benefit which the sefflor could claim from it; yet since it is not turned to a right of action, but would have still continued in him for the benefit of the heir, if there had been no attainer, it shall likewise continue in him for the benefit of the Crown. Cro. Car. 427, and see Plow. 552.

5. That if one attainted of high treason is feised of a defeasible fee tail, and hath also a right to an ancient intail which is disseminated, he forfeits both, for the same is within the express words of 26 H. 8, and the other within the words of 33 H. 8, and it doth not follow, that because naked rights to lands in the hands of a disseminate, or of the heir of a dissemine, are not within the meaning of the statute, therefore a right in the party himself is not; for the forfeiture of such naked rights might not only be by the King, but also by the feoffor of the disseminated fee; but might also be prejudicial to strangers, whom the statute, by an express saving, plainly intends to favour; but a forfeiture of the offender's right to his own lands can prejudice none but himself and his heirs. Hob. 334. Plow. 355. 2 R. & M. Rep. 305.

In the construction of the statute of 23 H. 8. it is agreed, that a power of revoking the uses of a settlement may be forfeited by force thereof, if the execution of it require nothing but what may be as well performed by any other person, as by the party himself by whom it was reserved; as the tendering of a ring to a party, wherein there is no mention of such considerations and inducements for the revoking such a power in the preamble of it, as are irreparable from the perfum, alter the case, if nothing of this kind be intended in the profvo scilicet, by which it is rendered, of 1572, it provides, that if such power provide any thing of this kind, it prevents the forfeiture; as if it be wrought thus; that if the party should be minded to alter and revoke the uses, he shall not be able to do so, of which he is occupied in writing the words. And if it be only, 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, little adown declaring his intent, Estl. 37. 14 Estl. 13, 14. 2 Estl. 19. 1 Rex. 263. 1 Jell. 3. 12 Mod. 172. 1 Kel. 194. 12 Kel. 214. 2 Kel. 666. 763. 773. 1 Leav. 279. Lane 25.

That neither an annuity granted pro confesso impotentium, nor an office granted for life, and requiring skill and confidence, are forfeitable by these statutes; but such office in life was to be continued without the force of them, because the grantor in giving an office descendable to all the heirs of the grantee, however unqualified, appears not to have been intended to induce his grantee 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 minorities, judgments, lands, tenements, possessions and reversion, remainders, rights, intercises, hereditaments, leases, chattels real, and other things of what nature ever, that Sir John Denvers, or any other to his use, or in trust 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 ever, an estate-tail was forfeit. 2 Leav. 169. 2 Leav. 57. 2 Mod. 130. 3 Kg. 459. 651. 712. 1 Plow. 299. Pellef. 181. B. C.

But it is held, that the statutes of primogeniture, which give a general forfeiture of all the lands and tenements of the offender, extended not to land in tail. Co. Lit. 159 a.

It is agreed, that a paying against a corruption of blood in a statute concerning felony faves the land to the heir, because the eftate to the lord for felony is only de jure tenetis, occurrant by the corruption of blood; also the paying the land to the heir, saves the corruption of blood and los of dower. Hal. P. C. 8. 3 Estl. 47.

But a paying against the corruption of blood in a statute concerning high treason, 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 eftate. 1 Stats. 85. 3. To what time the forfeiture shall have relation; and what is to be done with the offender's goods before conviction.

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 fagum factum, &c., only as to chattels, unless the party were killed in fighting from, or retailing those who had arrested him; in which case it is laid, that the forfeiture shall relate to the time of the offence. 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 confirmed by the party interested, as it may be in this respect, tho' not as to the point of the offence. Hal. P. C. 264. 270. 3 Estl. 230. 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 so specially proved. Kel. 16. Hal. P. C. 264. 2 Estl. 318. 3 Estl. 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. 386.

The forfeiture of a persson becoming fe de fo has relation to the time the mortal wound was given, so that all intermediate alienations are avoided. Plow. 260. 5 Co. 110. Hal. P. C. 29.
For

It hath always been held, that one indicted or accused of treason or felony may, bona fide, fell any of his chattels real or personal, for the fullness of hismell and family, until they be actually forfeited. 8 Co. 171.

But where a person being in Newgate for robbery and burglary, before conviction, made a bill of sale of all his goods, Chattels real or personal, came into the hands of the sheriff, the sheriff of London, it was held by Holt, 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 sustained out of 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 laid was a fraud at Common law. Skin. 357.

It seems the better opinion, at this day, that before indictment the goods of the offender cannot be searched and inventoried, and that after indictment they cannot be seized and taken away till the felon is convicted, for till the conviction the property remains in the felon. 3 Ryll. 229. Bridg. 77. Hale's P. C. 269.

And by the 25 Ed. 3. cap. 14, it is enacted, " That whereas, under the ancient usages and usages of the common law, &c. after indictment by the person charged, or any other person, take or seize the goods of any person arrested or imprisoned for suspicion of felony, before the same person so arrested and imprisoned be convicted or attainted of such felony according to the law; or else the same goods otherwife lawfully forfeited; upon the taking or seizing of such goods it shall be lawful for him that is so for hurt in that behalf, by action of debt, &c. For precedents of such actions, see 1 Lutw. 132. Crow. Eliz. 749."

This statute is to be in abeyance of the Common law, and hath been adjudged to extend as well to the forfeiture of money as of any other chattel. 8 Co. 171. Russ. 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. Co. Lit. 3. ed. 2. 2 Hawk. 25. 455.

And at Common law it was no plea for such township, that the goods were delivered to the custody of J. S. who imprest them, &c. 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 juries of the chattels of the prisoner, and shall deliver to him another which is chargeable, he shall be heard, and right done to the other. 2 Hawk. P. C. 456.

4. How far the offender's blood is corrupted; and in what cases the wife should lose her dower.

It is clearly agreed, that by an attainder of treason or felony, the blood of the offender is so far stained and corrupted, that the party loses all the nobility or gentility he might have had before, and becomes ignoble. Co. Lit. 8. 41. 3 Ryll. 211. Stawnd. 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 allegiance, and to deter them from taking up arms against the crown; for as the natural love men have for their ancestors, and that of their father, and will allow in discharge of him another which is chargeable, he shall be heard, and right done to the other. 2 Hawk. P. C. 456.

For

Ny 159. 1 Vent. 413, 417. 1 Lev. 60. 1 Sid. 260. Lit. Jef. 746. 2 Co. 13. 8 Co. 165. a.

As if there be grandfather, father and son, and the father is attainted, the son cannot claim as heir to the grandfather of the lands in fee simple, because he must of necessity derive the defendant through the father, which by reason of the attainder he cannot do. Co. Lit. 392. Dolifh. 12. pl. 4. Vent. 416.

So if there be two brothers, and one of them having issue a son be attainted, and either the son or uncle purchase land, and die without issue, the other cannot be his heir, because the blood of the father, through whom the defendant must be conveyed, is corrupted. Dyr. 247. pl. 40. Crow. Car. 543. 1 Vent. 417.

But it is also a general rule, that the attainer of a person, who need not be mentioned in the conveyance of the defsoent, does no hurt, let the ancestor be never so remote; and that therefore once may claim as immediate heir to another, without deriving the defendant through any other, he shall not be barred by the attainder of any other. Lit. Rep. 28. Ny 159. 165. 1 Lev. 60. 1 Sid. 260. 1 Vent. 413.

As if the son of one attainted purchase land, and have a son, and die, such son shall inherit him, because he derives his defendant from the son immediately from the father. Co. Lit. 392. 2 Co. Lit. 19. 3. Vent. 416.

So if a man hath two sons, and is attainted, and one of the same purchase lands, and die without issue, the other shall be his heir, because he may make his title without mentioning the father; and therefore there is no bar to the title, the one to be represented, or in the other to represent. 2 Vent. 8. a. 42 Mat. 35. 1 Rel. Abr. 625. pl. 5. Crow. Car. 543. Palm. 1 Lev. 59. 1 Vent. 125. 2 Rel. Rep. 93. 2 Sid. 25. 27. Mor. 509. pl. 775. Ny 158. Lit. Rep. 28.

So where a person attainted hath issue by a woman feitled of lands of inheritance, such issue may inherit the mother, though he never had any inheritable blood from the father. Ny 159. 167. Stawndf. P. C. 196. 2 Sid. 248. Crow. Yac. 539. Lit. Rep. 28. 1 Lev. 59. 1 Sid. 201. 1 Vent. 422. Co. Lit. 84. b.

If the father of a person attainted die feitled of an estate of inheritance during his life, no younger brother can be heir, but the land shall rather escheat; the elder brother, tho' attainted, is still a heir, and no other brother can be heir to the father while he is alive; but if he die before the father, the younger brother shall be heir, because there is no default in the father to be represented, nor in the younger brother to represent the father, after the death of his brother. Co. Lit. 8. a. 13. a. Ny 166. 170. 1 Lev. 60. 1 Sid. 195. 1 Vent. 413.

But if the eldest son let escheat, and died, such issue could not have inherited, but such land must have escheated, because the eldest son could not have represented the grandfather, but by the representation of the father, and as standing in his stead, and that in this case he could not do, because the father can have no representatives, and the younger son could not inherit, because the elder line is still continuing, which excludes the younger. Dyr. 48.

If a man be feitled of lands in fee, and hath issue two daughters, and one of them is attainted of felony, and the father dies, both daughters being alive, one moiety shall descend to the innocent daughter, and the other moiety shall escheat. Co. Lit. 163. b.

But that if a man makes a leave for life, remainder to the right heirs of A. being deceased A. who hath issue two daughters, whereas one is attainted of felony, it seems the remainder is not good for a moiety, but void for the whole. Co. Lit. 163. b.

For in the first case the lord by escheat must make a title to devise that estate which was once lawfully vested in the ancestor; which he cannot do, because there is no defect in this case, since the ancestor may be legally represented, and the innocent daughter may legally represent; and therefore there can be no title in the lord to void this moiety, though he has a title to the moiety of the offending daughter, who after her crime can represent no man; but in the second case, the fillers are to make title
title to the remainder, which they cannot do, because to make title to the remainder, they must bring themselves within the words of the gift; and the innocent daughter cannot take upon her the character of tenant-for-life, because she alone, since they both male but one heir to the ancestor, and she cannot join, because one is attainted, and incapable of that character. 

"Ca. Lit. 142. a."

Although a person attainted be to many purposes looked upon as dead in law, yet he hath a capacity to purchase land, which the King shall have upon office found, and not the lord of the fee, because his person being forfeiture the King, he can't purchase but for the King. 

"Ca. Lit. 2. b."

But if a man attainted be pardoned by act of parliament he may purchase as before, for he is totally reformed and ineritable to all persons; but if he be pardoned by charter, he may himself 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. 


If a man be attainted, and after pardoned by charter, the children born before such pardon shall not inherit; but if they fail, the children born after such pardon may inherit from him; as the pardon makes him capable of new relations as well as of new purchases, tho' all the old legal benefits and relations are lost. 

"Noy 170. Ca. Lit. 8. a. 3 lyl. 233." 

Before the statute of 1 E. 6. cap. 12, the wife not only lost her dower at Common law, but also her dower act of 6 E. 5. cap. 11. but woman, who was also the subject of certain ex officio 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. 


But the wife forfeited lands given jointly to her husband and her, whether by way of frank-marrige or otherwise, but only for the year and day and waife. 

"Ca. Lit. 37. 3 lyl. 216." 

It is enabled 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 fortunate 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 tho' her husband had not been attainted. 

But this is resisted as to treason by 5 & 6 E. 6. cap. 11. par. 9. by which it is enabled, "That the wife, whole husband shall be attainted of any treason whatsoever, shall in no wise be received to, &c. challenge, demand, or have dowry of any the lands, tenements or hereditaments of the person so attainted, during the said attainer in force." 

If the husband forfeited of lands in fee makes a feoffment, and then commits treason, and is attainted of it, the wife shall not recover dower against the feoffor. 

"Brend. 56. Dyer 142. Ca. Lit. 111. a." 

So if the husband is attainted of treason, and afterwards pardoned, yet the wife shall not recover dower; but of lands purchased by the husband after the pardon, the wife shall be endowed. 


If a husband having levied a fine with proclamation, is erroneously attainted of treason, and the five years pass after his death, and then the outlawry is reverted, the fine and nonclaim are no bar till five years are passed after the reverter, because the wife could not fee for her dower while the attainer flourished in force, neither might she any way receive it. 

"3 lyl. 216. Mer 639. pl. 879." 

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 severall offences have been made felony fine, care has been taken to provide for the wife's dower. 

"2 Bac. Atr. 534. See 1 lyl. Atr. tit. Forfeiture." 

Forfeiture in real rates. A forfeiture of copyholds by being timber was relieved in equity; but Lord Keeper declared, that in case of a willful forfeiture he would not relieve. 

"Hil. 19 Cur. 2. Ch. Cates 49." 

In cases of forfeiture of a lease for non-payment of ground-rent, and a recovery in ejdema, Chancellor will not relieve on tender of arrests and colls, where the forfeiting perfon was offered the same terms by the ground landlord before the bill brought, and refused them; per 

"P*eb. 161. 8. 23 & 24. 2 Hen. 2."

"2 Laws 372." 

Equity will not relieve against a forfeiture incurred by act of parliament. 

"St. Tr. 177. 3 lyl. 252. 353. Trin. 1717." 

Forfeiture of marriage. (Perforstitia matrimonii,) is a writ which lays against him, who, holding by knight-service, and being under age, and unmarried, refused her whom the lord undertook him without his dispensation, and did not ratify another. 

"P. N. B. 31. 141. Orig. fol. 653." 

Forgalumnum. (Forget.) A small referred rent in money, a quit rent. 

"Coswell. edit. 1777." 

Forgery, (from the Fr. forge, i.e. accuder, fabricae) At Common law is an offence in falsly and fraudullently making or altering any matter of record, or any other authority, matter or publick nature, as a parish register, or any deed or will, and punishable by fine and imprisonment, and such other corporal punishment as the court in discretion shall think proper. But the mischief of this kind increasing, it was found necessity to guard against them by more proportionate laws; hence we have several acts of parliament declaring what offences amount to forgery, and which inflict severer punishments than were by the Common law. 

"1 Hawk. P. C. 182. 2 Bac. Atr. 566." 

1. What shall be deemed forsw of the Common law, that is, before any act of parliament was made concerning this offence. 

2. What shall be deemed forgery by statutes, and the punishment thereof. 

3. Pleading. 

1. That
It seems, that by a bare non-feasance a man can't be held to be guilty of forgery; as if a man in drawing a will omits a legatee to whom he is directed to inter his estate, yet it has been held, 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 to one man causeth a devise of the same lands to another to pass a plain estate, which otherwise would never have passed, to be held for being a member of parliament, who in truth, at that time was not a member, as a matter of record is forgery. *Mer. 766. No. 101.*

But it seems to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterfeited for, it would be of validity or not, and upon this ground it has been adjudged, that the forgery of a public record, if 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,* 2 *Sid. 142.*

It is clearly agreed, that a Common law the counterfeiting a matter of record is forgery; for since the law gives the highest credit to all records, it can't be of the utmost ill consequence to the public to have them either forged or falsified. 1 *Roll. Atr. 65. 76. Yale, 146. Cre. Eliz. 178.*

Alfo it is agreed to counterfeit to any other authentick matter or instrument, as a privy seal, or licence from the crown of the Exchequer, to convey a debt, or certificate of holy orders, or a protection from a parliament-man. *1 Roll. Atr. 65. pl. 53. Cre. Cor. 326.* 1 *Sum. 335.* 1 *Roll. Atr. 65. pl. 5.* 2 *Balt. 137.* 1 *Lev. 159.* 1 1 *Sid. 142.*

It is also unnecessary to say, 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. Atr. 65. pl. 10.* 1 *Rom. 81.* *Owen 47.* 1 *Sid. 278.* 1 *Lev. 137.* 1 *Mer. 766.* *No. 101.* 1 *Roll. 392.* 1 1 *Hawk. P. C. 184.*

It is certain it is said, that he can't find this point anywhere directly holid.

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; alfo it has been held, that a forgery another's hand, and thereby receiving rent due to him from his tenants, is not punishable at all; but he is, it can't be surely proved by any good authorities, that such base crimes are wholly disregarded by the common law, as not deserving publick prosecution; for the opinion, that they are punishable by no instrument, is so contrary to human reason, that it must be maintained, since many of them are more certainly punishable by force of 73 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 when a writing concerning such matters, yet no one will say, that the making a false deed concerning 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 forgery of itself 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. 431.* 1 *Sid. 16. 135. 451.* 1 *Roll. Atr. 66. pl. 8. 9.* 1 *Hawk. C. 180.* 1 1 *Sid. 231.* 1 1 *Lev. 131.* 1 *Cre. Eliz. 296.* 1 *Balt. 265.* 1 *Cre. Eliz. 166.* 1 *Yale 146.* 1 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 release or acquittance for a sum of money, though without fraud, was punishable; but yet it would be the most injurious notion, and even a reflection on the common law, to suppose it so defective as not to provide a remedy against offences of this nature. This case was thus: An information was exhibited in the name of the Attorney General, charging that Mr. Ward, captain enarel on delivery to the Duke of Buck's 315 tun and one quarter of allum...
Illicit ad certain diem jam praetereum, id cum intentio
de praestare ibi, forges, ad infradictum, non habet
a quibusdam refert et magis segni, "Mr. John Ward,
i hiera by order to charge 660 tunns and
quarter of alum to my account, part of the quan-
tity here mentioned in this certificate, and for you do-
ing this shall be your discharge. Buckingham, April 30,
1706."
The information hereof no way affects the publica-
tion of this case, and no other deferulion that was in-
cluded in the publication that was in 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 reafon of the thing.
There is no reafon why this should not be punished as a
felfe, as well as the forgery of alibis for defects in the
great, or greater, for the value may be 50,000/. in one
cafe, and a defed perhaps affect only a fingle acr of land.
The flatue 5 Eliz. flew this to be a crime, by using the
words writings, in contradiftion to deeds. It can-
not be proceeded as a cheat at Common law, without
an actual prejudice, and that is an obfervation on the
33 H. 8. the cafe cited out of Crs. is not law, and fully
thofe words are accountability. Regina v. Travers was for-
ging an indorsement on an army debenurate, and laid as
Common law. The reafon why we do not meet
with an ancient determination is, because perfonal cre-
ations coming from before the statute, the fentience of
the statute is, It is not neceffary to fliew an actual prejudice,
possibility is enough; and here it appears, there would
have been one, if the forgery had stood. Judicium pro
rege. Afterwards he was fentenced to hang in the
pifloy before Wyfeminfer-Hall gate, (which he did) to pay
300/ a day not friend the fentence, and the commit-
tment till all was performed. Hil. 13 G. 1. The King

Indelicion fetting forth, that defendant intending to
draef the King, and unjustly to procure a payment to
be made in the name of an officer, did knowingly
publish a certain fake and counterfeit affidavit, purport-
ting to have been sworn by one Elizabeth Roe, before Thomas
Engier, Efq. a judge of the peace, by which means he
received 5l. 6l. 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 arret of
judgment, that this not being laid to be defed by the
defendant, 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 cafe this can
never be doubted. And it has always been held, that
the statute did not create a new offence, but only added
a further penalty, as a height the old one, is the
common flatu. The 5 Eliz. cap. 14. reciting the forgeryes
at Common law, has the word writings, in contradiftion
to deeds: And it is in the election of the party, in the
case of forgery deeds, to lay the indelicion either at
Common law, or upon the statute. Judgment pro rege.

Forfery to the party's own detriment only, is not cri-
minal. L. Raym. 530. 1 Sa!k. 275.

2. What shall be deemed forgery by flatures, and the pu-
ishment thereof.

By the flat. 5 Eliz. cap. 14. feft. 2. it is enacted,
"That if any perfon or perfon, upon his or their own
head and imagination, or by fake conspiracy and fraud
with others, shall wittingly, fubtilly or falsely forge
or make, or fubtilly caufe, or willingly cause to be
made or made any fake deed, ejtate or writing felled, court-
roll, or the will of any perfon or perfon in writing,
in the intent that the effeate of freehold or inheri-
tance of any perfon, of, in, or to any land, ten-
ements or hereditaments, freehold or copyhold, or the
right, title or interest of any perfon in land, or
in, or to, any fee simple of land, or to, or in, or to, any
shall be made forfeided, troubled, defeated, recovered or
charged, or shall pronounce, publish or flew forth in evidence, any such
fake deed and forged deal, charter, writing, court-roll,
or will as true, knowing the fame to be fake and forged, as
is afofired, to the intent above remembered, except be-
ing
1. That a false customary of a copyhold manor made in penance, under the fees of several tenants of the manor, and containing in it divers false customs, apparently tending to the dilution of the lord, and falsely pretending to be his title, to be let forth by the consent of all the tenants and allowance of the lord, is within the said false branch of the statute, as being a false writing made to the intent to defraud the inheritance of the lord. Dyer 327. p. 26. 3 Lev. 182.

3. That the forgery of a lease for years, or of a grant of a rent charge for years, in the name of one who is feigned a tenant or lessee, either by writing within the said false branch of the statute, because the said fraud is found in general words extending to any molestation whatsoever of such estate, without mentioning any estate or interest, in the claim wherein such molestation shall consist; and from this ground it follows, that these words in the second branch of forgery mentioned in the statute, to the intent that any person shall claim any estate or interest for term of years, are meant only of such forgeries which relate to such an estate or interest in the before. 3 Jeff. 170. Nay 43. 1 Hawk. P. C. 186.

3. That the forgery of a will in writing of one polluted of such an estate, mentioning a bequest thereof, is within the said second branch of the statute as being a false writing, made to the intent that some person may claim an estate for years, notwithstanding the said branch (whether of a will or writing) was within the first doth. Dyer 327. p. 43. 1 Hawk. P. C. 186.

4. That the forgery of a lease of lands in Ireland is not within either of the branches of the statute. 3 Lev. 170.

5. That the forging of a deed, containing a gift of manor and personal chattel, is also no way within the statute, the words whereof to this purpose are, "If any person shall forge any obligation, or bill obligatory, or any acquittance, release or other discharge of any debt, account, action, suit, demand, or other thing personal." 3 Lev. 170. 1 Hawk. P. C. 186.

6. That the forgery of a year or manor merchant, or of a recognizance in the nature of a statute staple, by acknowledging them in the name of another, is within the statute as being obligations, because they must have the seal of the party, by the express words of the statute, which require in what manner false or recognizance shall be taken; but that the forgery of the statute staple is no way within the statute, because it need not the seal of the party, but only the seal of the staple provided for it. 15 H. 7. 15 a. 2 Rol. Abr. 466. 1 Hawk. P. C. 186. note. 3 Jeff. 171.

7. That he who after another that a deed is forged, in danger of the statute, if he shall afterwards publish the fame to be true, notwithstanding the words of the statute be, if any one shall publish, such false and forged deed, knowing the same to be false or forged. 3 Jeff. 171. 1 Hawk. P. C. 187.

8. That double damages shall be awarded to the party to whom a false or forged deed is given after the true. 3 Jeff. 172. 1 Hawk. P. C. 187.

1. That one who has been convicted of publishing a forged deed, may become guilty of felony for forging another deed afterwards, as well as by publishing any such deed, notwithstanding the second offence be not of the very fame nature with the first; for the words of the statute are, "If any person being convicted or condemned of any false writing or forgery shall, after any such conviction or condemnation effect or commit any of the said offences." 3 Jeff. 171. 1 Hawk. P. C. 187.

10. That notwithstanding it be necessary in every prosecution upon the statute, to strictly enforce the very words of it, (for which cause it has been resolved, that an indictment, for which cause it was found, was the only mode of being indicted, without adding that it was false, it being insufficient,) yet there was no necessity that the transfusion of the words of the statute should be in proper classical Latine, so that it were
were intelligible; and upon this ground it has been ad-
judged, that an indictment setting forth, that the defend-
ant [a]gainst whom this indictment was drawn, did forge, &c. meaning thereby to express, that he did it out of his own head, is insufficient. 3 Keb. 356, 357; 3 Coh. 369. 1 Keb. 549. 2 Keb. 129. 2 Lev. 221. 1 Inst. 23, 24. 1 Khb. 370. 1 Co. Litt. 1 P. C. 187.

17. That upon an indictment of trespas, forgery, and publication et a deed, a verdict finding the defendant guilty of trespass & forgery procidus, petit [sic] in indictment properly, is insufficient, because these words do not express all, or of all, the ingredients of this offense; for such a verdict may be sufficient for another reason, because the offense is equally within the facts, and the punishment the same, whether the party be guilty both of forgery and publication, or of one of them only. 2 Lev. 111, 121. 3 Keb. 523. 2 Ld. 1 P. C. 187.

18. 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 intruded, and the acknowledgment laid eleven months after the intru-
sion; and it being objected, that it being of a bargain and sale it can have no force, not being in writing binding to the party without the acknowledgment, but the court held, that admitting the acknowledgment essential, so that the intru-
sion was not good, unless that appeared, (which they seemed to deny) yet it was within the statute; and that the there was a flaw in the conveyance forg'd, which court referred learned men to settle, and yet the facts may be impeached, molested and troubled by such a deed, which makes it within the statute. 1 Keb. 707, 749, 803. The King v. King, and Pash. 4 Geo. 2. S. P. determined between The King and a Cracker. See Hk. 372.

The defendant was convicted upon the statute 5 Eliz. cap. 14. for forging a lease and release. And the in-
dictment sets forth, that Garbut et al were feized in fee of certain messuages, lands and tenements called Jauick in the parish of Clackton in Essex; and that the defendant forged a lease and release as from Garbut et al, whereby the said lease was a valuable consideration to convey to him all that park called Jauick Park in the parish of Clackton in Essex, containing eight miles in circumference, with all the deer, woods, &c. thereto belonging.

After verdict pro rege, it was moved in arrest of judgment, that the premises supposed to be conveyed were no more than tenements, and therefore the estate of Garbut et al, which was houses, lands and tenements; that it was impossible this conveyance ever could melt or disturb them; if it was a true deed it could not pass their lands at law for want of a proper description; and that what lands are improperly described, a court of equity, after recovery of the vendor, having by proceeding to words; yet 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 cafe is no more, than if A. had been feized of Blackacre, and B. had forged a conveyance of Habilhus, 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, "to the intent that the estate of freehold or inheritance of any per-
son to any land, &c. for the right or title of, in and
unto the same, may 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 he was given the benefit of the act, and the de-
cendant 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. Ebr. 4 Geo. 2. The King v. Jophet Crofte. S. T. 901.

By the Stat. 2 Geo. 2. cap. 25, reciting, that the laws and statutes were not sufficient. 2 Geo. 2, c. 18. preventing the abominable crimes of forgery, it is enacted, "That if any peron, from and after the 29th day of June in the

year of our Lord 1720, shall falsely make, forge or counter-
fete, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or abet in the like making, forging or counterfeiting any deed, will, dedication, bond, writing obligatory, bill of exchange, promissory note for payment, bond, promissory note or indenture of any kind, or any bill of exchange, or promissory note for payment of money, acceptance or receipt either for money or goods, with inten-
tion to defraud any person, knowing the same to be false, forged or counterfeited, then every such person being thereof lawfully convicted, according to the law here declare, shall be deemed guilty of felony, without benefit of clergy.

Provided, that no attainder for this offence shall make or work any corruption of blood, los of dower, or di-
ference of heir.

And 3 Geo. 2. reciting the act above mentioned, and that the same doth not extend to the forging of any acceptance of bills of exchange, it is enacted, "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 aid or abet in the like making, 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 as true any false, forged or counterfeited note or bill, or any bill of exchange, or accountable 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 convicted, according to the law here declared, shall be deemed guilty of felony, and shall suffer death as a felon, without be-

Of the 7 Geo. cap. 20. Any person forging or counter-
feteing any entry of the acknowledgment of any me-
orial, certificate or inrolment, as is therein mentioned or ordered to be registered, and be thereby lawfully con-

victed, 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 8 Geo. 1. cap. 22, sect. 1. Forgery authorities, &c. to transfer false or fictitious deeds, &c. and perfec-
tions of their offices, is made felony without clergy.

Stat. 9 Geo. 1. cap. 12. sect. 4, enacts, that if any per-
son after the second of April 1733, shall forge or counterfeite, or procure to be forged, &c. or knowingly aid or abet in the forging, &c. any order made forth in possession of any land, &c. within the kingdom of Great Britain, cap. 20, or of this act, or any affignment of such order, or of the annuities payable thereon, or any receipt or dis-
corage to the Exchequer, for the annuity due on such

landing order, or any letter of attorney, or other au-

thorities, to transfer, affigne, &c. any such or order, or to receive the annuities due thereon, or shall counterfeit any name of the proprietor of such order, in any affignment, receipt, letter of attorney, &c. or shall fraudulently de-

man to receive any such annuity, by virtue of such forged receipt, &c. or shall falsely and deceitfully perfonate any true proprietor of any the said orders, thereby af-
figning or evacuating to any such order, or receiving or endeavouring to receive the money of such pro-

priator, as if such offender were the lawful owner thereof; in every such case, every such person (being convicted thereof in due form of law) shall be adjudged guilty of felony without benefit of clergy.

2 Geo. 2. cap. 25. enacts, That persons convicted of forgery, &c. pracising as attorneys, &c. of-
fending against the act for preventing frivolous and vana-

tious arrests, shall be transported for seven years.

Stat. 4 Geo. 2. cap. 18. sect. 1. enacts, That any per- son, false or counterfeiting and paper for any of such, commonly called a Mediterranean paper, or who shall alter or erase any paper, made out by the commission for executing the office of Lord High Admiral, or shall pub-
F O R

If as true, any forged, altered, or erased pafs, knowing the same to be forged, &c. shall be guilty of felony without benefit of clergy. See S. 1713.

3. Pleadings.

In an indictment for forgery at Common law, though it is true that the party was prejudicial, yet the indictment is good. See in a action of forgery des faux faits. Therefore where the indictment was for forgery of a forerunner of the lands of S. S. it was not shown in the indictment, that S. S. had any lands; yet Held. Chief Justice, at Bury Summer assizes 12 Hill 3, upon motion for a new trial held it good; and judgment was given against the defendant, being an attorney, that he should stand in the pillory. Another exception was, that the indictment was, quod falsa confessit falsum scriptum, which is repugnant; yet held good. 1 Ed. Raym. 273.

The defendant was indicted for the following: And for the forgery, 

1. Indictment was for forging a cocket for five packs of linen cloth; and it was moved in arrest of judgment, for that it was not such. It was held good by the argument and per Held. It suffices that the things which it contains be certain enough, and if new art be brought, defendant shall say, that a former action was brought for the same by the name of to many bonds, &c. and the Queen for a fine of $.

2. Indictment for forging a deed of assignment of a lease with the mark of one Godard, cujus tenor fiquitur, but sets not down the mark as in the assignment, and this was objected, for without that it could not be a forgery. 3 Ed. nov. aliait., 1 Salk. 342. Pofch. 2 Ann.

An information was brought against three for forgery, and maliciously conspiring and contriving an entry of a marriage in the register-book, between Sir R. Dodg and Fra. Tovshell, to the impeachment of the dower of the true wife of Sir R. Dodg, and to deprive her children of the inheritance; but it was held good by the argument per Held. The defendant was convicted in arrest of judgment, that as two were acquitted, the other could not be alone guilty of the conspiracy; but it was answered, that the indictment was good without the conspiracy, which was only an inducement thereunto, and not the ground of the indictment. Judgment was given against the defendant. Pofch. 1652. 2 B. R. 2 Sib. 75.

The statute requires it to be a deed sealed, and there it was only scriptum, fed non aliator; for when the deed is recited, its concluded with dat. & fagitur, such a day and year, and before it is once laid quidem scriptum; the judgment was affirmed. Pofch. 52 Car. 2. B. R. 2 Shaw. 5.

Error was allowed, that the indictment had not in it vi & armis, and that the indictment is not for nonobtance, but for misibility; and Judge J. held, that this was cured by the express words of the statute 31 H. 6 cr. 8, and cited G. T. H. Hunt's case, to related. 2 Telffen and Tyndall. J. term writing, and to this Rainsworh Ch. J. inclined; but as to this move admits. But afterwards, on reading the statute, it was agreed by all, that the want of vi & armis was cured.

Another error was, that the indictment lays, that he forged it false scriptum quodam proprietati, & that is, it should be intended 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 it would be enough, though it be not so elegant a translation as might be. 2 Lev. 221. Pofch. 30 Car. 2.

Information set forth, that the defendant did forge quidem scriptum continuos in js furtum obligatorium per quod furtum furtum obligatorium A obligatus fuit praetul- dendum aui in 40 libros, &c. the defendant was found guilty, and exception was taken, that the false alleged was a contradiction of itself, for how could A. be bound when the obligation was forged? And also, that it did not set forth what that scriptum obligatorium was, whether it was scriptum futilitum or not. Per cur. The defendant by his counsel objected, to having a writ in, which was contained quidem scriptum obligatorium, and that may be a true bond. Judgment was arrested. 7 Lev. 104. Pofch. 2 Jac. 2.

The indictment was, that the defendant fabriicavit juo falsificari, and for forgeries, and it was heard upon demurrer, for an indictment could not be so certain and positive. 1 Salk. 242. Alch. 7 Will. 3.

Indictment was for forging quidem scriptum obligatorium of S. S. It was objected, that it should be furtum, purporting a writing obligatorium of S. S. fed non aliator, for the 5 Ed. 14. mentions false deeds as well as false writings. 1 Salk. 342. Hill. 1 Story B. R. see 11 Hin. Ab. tit. Forgery.


Foitbria. A herdland, a foreland or headland. Cowell, ed. 1727.

Foitbirens, Outward, or on the outside. Kim. Gloss.

Foitbirenum manerium. The manor, or that part of it which lies without the bars or town, and not included within the liberties of it. Sumna redditiwm officii- rum de maneriis, Hec eimo Landico cum nullandis foriniciis. Porsch. donit. pag. 357.

Foitbirenum fermittunum. The payment of aid, feugage, and other extraordinary burdens of military service; opposed to intrinseum fermitum, which was the common and ordinary duties within the lord's court and local liberties. Raym. 101.


Foiispirium. Where a man by force, or otherwise, exerts what is not due. Cowell, ed. 1727.

Foiisfamilairit. A son is properly said forisfamilia, when he accepts of his father's part of his lands, and is contented with it in the life-time of the father, so that he cannot claim any more. Cowell, ed. 1727.

Foiisbiamun. Land extending further, or lying before the sea, a promontory. Et de desima forlandis xxii. decuries, fo. de bene dicto Johannis Waker, quod dicit ante terram ecclesiae, de describ. M. Aug. 1 par. tol. 332. Camden expounds Cantium praeemium, the foreland of Kent.

Foiisland. Was such land in the bishoprick of Hereford, as was granted or leased dum episcopus in epi- scopio fleterius. And it might have it for his present income: But now that custom is done, and the same land granted as others, by lease, yet still retains the name. Butterfield's Survey, s. 50.

Foiim. Is required in law proceedings, otherwise the law would be no art; but it ought not to be used to en- force or intrinseum. 2 Telften. ed. 1727. This form in pleas that go to the action, may be taken advantage of and helped on a general demurrer. Lid. Raym. 1015.

Fojina
For

forma pauperis, or in forma pauperis, is when any person has cause of suit, and is so poor that he cannot do justice without additional charges of going at law, or in equity. In this case upon his making oath that he is not worth 5l. his debts being paid, and bringing a certificae from some lawyer, that he has just cause of suit, the judge admits him to sue in forma pauperis, that is, without paying fees or costs. He is entitled to this favoured state at the discretion of the judge. 11 H. 7. cap. 12. Such plaintiffs to pay no costs, but to be punished at the discretion of the judge, 23 Hen. 8. c. 15. sect. 2. Where one may defend an information relating to the customs in forma pauperis, 2 G. 2. c. 28. sect. 1. See 1 T. F. 200.

Fondon, (Breve de forma donandi) is a real action which lies for the inference in tail after the death of the ancestor, or for him in remainder or reversion after the estate-tail determined, and is called formeldon, because the writ comprehends the form of the gift. Co. Lit. 526. b. 537. B. 170. The proceedings in this action, as in all other real actions, being dilatory and expensive, it is now seldom brought; but as it is a proper remedy in many cases, and still in use, it is thought proper to consider it under the following heads.

1. Of the several writs of formeldon, viz. formeldon in defender, formeldon in remainder, and formeldon in reverter; and of what things a formeldon will lie.

2. How the demandant must set forth his title; and of the tenant's plea in abatement or bar.

1. Of the several writs of formeldon, viz. formeldon in defender, formeldon in remainder, and formeldon in reverter; and of what things a formeldon will lie.

Formeldon in the defender is an action assugetrel desutel, which lies for the inference in tail, upon a violation of the right which defends to him from his ancestor, according to the form of the gift, and is in the nature of a writ of right, being the highest writ that an inference in tail can have. 2 Inst. 291. Plow. 235. F. N. B. 471. Lit. sect. 595.

This writ lay not at Common law, but was given by Wyl. 2. cap. 1. the form of which is yet forth in the statute; for at Common law all estates-tail were fee-simple conditional, and the donee, by having of issue, might have aliened the estate, or forfeited it, in which cases the issue had no remedy; but when by the statute, called the statute de dominis conditionalibus, the donee was deprived of this power, it was also necessary that the issue should have a remedy against the alienation or discontinuance of his ancestor, and therefore the formeldon in defender was given. Co. Lit. 21. 326. b. F. N. B. 471. 4. 4tuld. 328. 6. F. C. 40. Mer. 155. 4 T. F. 209.

And therefore since this statute, upon every gift in tail of lands or tenements, if the ancestor doth alien the lands or tenements, or be defecuted or defcorps thereof and dieth, he who is heir unto the lands, by the force of the gift, shall have his formeldon in defender against him who is tenant of the lands or tenements, or permit of the profits of the same. F. N. B. 171.

So if tenant in tail hath issue two daughters, and one of them hath issue a son, and dies, and the tenant in tail dieth, and a stranger abates, the surviving daughter and son shall have a formeldon in defender. F. N. B. 478.

So if a man give lands unto a woman, and unto the heirs which he himself shall beget on the body of the said woman, and they have issue between them two daughters, and one of them hath issue a daughter, and dies; and after the death of the donee and donee dies; the aunt and niece shall join in a formeldon. F. N. B. 474.

If tenant in tail hath issue two sons, and dies, and the eldest son enters, and hath issue, and dies, and the issue enters, and dies without issue, the youngest son of tenant in tail shall have his formeldon in defender. F. N. B. 474.

If tenant in tail hath several daughters, and after his death they enter and make partition, if one of the daughters after discontinuance, and dies leaving issue, such issue may have a formeldon in defender. F. N. B. 476. See tit. Coparceners.

So if two coparceners be tenants in tail from their father or mother, and afterwards they make partition, and one of the other coparceners dies without issue, the issue shall have a formeldon in defender for the whole land. Fitz. N. B. 476, 480.

So if lands be given in trust to two men, and to the heirs of the body of one of them, and he who hath the inheritance marries, and dies leaving issue, such issue may after the death of him who hath the freehold, bring a formeldon in defender against a stranger who abates, and allege the expatriation in his father; for to such an extent the estate-tail was executed in the donor, but in this case, it seems, that the wife of the donor which had the inheritance in him that not be endowed, because the estate-tail was not executed to all purposes in the husband. Per. sect. 523.

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 formeldon against the great lord, who by his formeldon attorney or clerk, recovers an estate of inheritance, which the tenant hath not in him. Co. Lit. 297. 8.

If in a formeldon in defender the demandant is barred by verdict or on demurrer, yet his issue in tail shall have a new formeldon on the construction of the statute Wylm. 2. So if he be barred of a writ of error by a release of errors by his ancestor, yet he shall have a new writ of error; for he does not claim altogether as heir, but per formam doni; and by the statute he shall not be barred by the faint or false pleading of his ancestor so long as the right of intail remains. 6 G. 7. 4.

The writ of formeldon 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 defecuted, and dies without issue, he in remainder, or his representatives, may bring their formeldon in remainder. Lit. sect. 597. F. N. B. 493.

It is a writ of right which lies for the inference in tail of lands or tenements, from the subsequent alienation of the estate, the statute de dominis conditionalibus, which is a writ of right, being the highest writ that an inference in tail can have. 2 Inst. 291. Plow. 235. F. N. B. 471. Lit. sect. 595.

It may be brought in cases of the intestate devise, or for a devise after a devise by will, in which case it is called the statute de dominis conditionalibus, which is a writ of right, being the highest writ that an inference in tail can have. 2 Inst. 291. Plow. 235. F. N. B. 471. Lit. sect. 595.

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18" 61'
15" 96'
2" 65'
formenon, 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 seized of the estate-tail in possession, and the right descends to his heir, the heir shall not have a formenon in remainder, but in the in Remainder, as if A. gives lands to B. in tail, remainder to C. in tail, B. dies without issue, C. endeth, and aliens in fee, then, because the body of the issue was for, because the body of the issue was for, therefore the tenant in tail, for he may have other sons besides his eldest. 5 Mod. 17. Per Helc Ch. J.

In a formenon in remainder, it is necessary for the tenant to allege, that the issue in tail is dead without issue, without alleging that the tenant in tail is also dead without issue, for, in the common law, there must be no issue. So if the tenant in tail, therefore the tenant in tail, is dead without issue, that is dead without issue, therefore the tenant in tail is dead without issue, for he in remainder can have no issue. Dyer 143. 5.

This view lays 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, etc. might have barred the possibility of the donee's right of reverter, yet the having of children was in the nature of a condition precedent: and in that case, if the donee should have issue, he might bring his formenon in remainder; and recover against any alienation or disposition of the donee. 2 Lees. 356. Plowd. 235.

It seems that all such inheritances, as may be intailed, may be recovered in a formenon, and that therefore it lies not only of lands, but also of rents, commons, etc., that must be taken away from heir to heir.

But no formenon will lie for things merely personal, which only charge the person, and neither issue out of land, nor relate to it; and therefore cannot be demanded as a tenement in a precedent; as if A. grants to B. and the heirs of his body, to be master of his hawks, or keeper of his hounds, with a fee or falary annexed to the same, the issue of B. can't have a formenon thereof. 1 Rot. 837. Plowd. 2.

If there be a custom in a manor, that copypholds may be intailed, which co-operating with the statute de donis is allowed to be good, the issue in tail may have a formenon of such lands. C. Lit. 60.

2. How the demandant must set forth his title; and of the tenant: plea in abatement or bar.

The demandant in a formenon in the defender must make himself heir to him who was last seized by force of the title, but he need not mention an ancestor who happened to be inheritable, but was never actually seized by force of the title; as if there be grandfather, father and son, and the father dies in the life-time of the grandfather, the son may bring his formenon without alleging any right in the father. So if the donee in tail has two sons, and the eldest dies in his life-time, then, as a straw man, by the statute of dreame, the second may, after the death of his father, bring his formenon without taking notice of the eldest son. Reg. 243. 8 Co. 87.

Dyer 216. pl. 56. F. N. B. 477. Helc. 78.

So where in a formenon in the defender the demandant set forth, that the right descends to him as brother and heir of the donee, but he need not mention an ancestor who happened to be inheritable, but was never actually seized by force of the title; as if there be grandfather, father and son, and the father dies in the life-time of the grandfather, the son may bring his formenon without alleging any right in the father. So if the donee in tail has two sons, and the eldest dies in his life-time, then, as a straw man, by the statute of dreame, the second may, after the death of his father, bring his formenon without taking notice of the eldest son. 1 Mod. 219. 2 Mod. 94. S. C.

In a formenon in remainder, the demandant need not set forth, that the right descends to him as brother and heir of the donee, but he need not 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 Mod. 219. 2 Mod. 94. S. C.

In a formenon in remainder, the demandant need not set forth, that the right descends to him as brother and heir of the donee, but he need not alleging that the donee died without issue; and that after his death in remainder, he is a stranger to the pedigree, and therefore not obliged to make it out. Dyer 216. pl. 56. Bath 155. Dyer 14. pl. 75. 19. pl. 90.

So in a formenon in remainder, the demandant need not allege that all the parties are strangers, as in the precedent case; and it is sufficient for him to shew, that he who last inherited by force of the Vol. II. N°. 79.
cover no damages; and that *Litten* and *Gay* were not to be intended of simple plea of non-tenure, but of non-tenure with a disclaimer, as appears somewhat in *Litten* and *Gay* upon the simple plea of non-tenure, supposing the tenant hath no freehold, but a recovery in fee, the defendant shall not be referred to the fees for, no thing is disproved by the simple plea of non-tenure but only the freehold; which may be true, and yet be the recovery in fee; but when the parties disclaim or plead non-tenure, and disclaims, the defendant shall be referred to the whole, because he hath disclaimed the whole. 3 Lev. 330. 2 Lott. 963. S. P.

Non dedit, i.e. No such intail, is a good plea in bar of all formidams, and it may be pleaded by the voucheer. *C. Lott.* 324. *B. Booth* 163.

To a former plea in remainder may be pleaded in bar an affirmance, made by another long before the donor in the court had any thing, and that the tenants are heirs to the first intail. *B. Booth* 164.

A remitter may be pleaded in bar, as thus; that the donee was feised in fee, and being an infant made a foeman to the donor, who gave the land to the infant in tail, by which he was remitted, whole effate the tenant hath. *B. Booth* 164.

If in a foro in remainder the tenant pleads infancy, and that the remainder defended to him, and prays his age; and the demandant pleads that the foro in remainder did not defend to him, and therupon issue is joined, and found for the demandant, a final judgment shall be given notwithstanding the infancy of the tenant. *Lev.* 163. 1 Sid. 118. 232. S. C.

The tenant may plead that the demandant, at the day of the purchase of the foro, was feised of the lands for which the foro in remainder was brought, but in such plea he must shew of what estate. *Vinc* 23. *Dyer* 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.* 319.

A bastard plea and lineal warranty, with affets, by defendant, may be pleaded in bar to a foro in remainder in defendant. So a collateral warranty, without affets, before the statute 4 & 5 *Ann.* might be pleaded in bar to such a foro in remainder. 2 *Inf.* 293. *B. Booth* 163. See tit. Warranty.

So a common recovery may be pleaded in bar to a foro in remainders or reverter, either with double or single voucher; with fingle, if the tenant to the writ were feised of the estate-tail at the time of the recovery; with double voucher, tho' he were not feised. *B. Booth* 164.

In a foro in remainder 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 these lands by such exchange, and takes the profits; and the advice may plead this plea, tho' he be a stranger, for he is privy in estate. *B. Booth* 165.

For more learning see this subject, *fix* 12 *Vinc. Abr.* tit. Formedam.

*Formella.* A weight of lead of about 72 pounds. *Cowell,* edit. 1737.

*Former affiant.* In what cases a good plea to the bringing a new action. Action on the cafe for erecting of a nuisance 20 *February*; the defendant pleaded a prior action, brought for erecting a nuisance 20 *die Martii,* and a recovery thereupon, and ever thereto be the fame nuisance and erection. The plaintiff demurred, and judgment against him; for he may have an action for continuing the same nuisance, but can never have a new action for the same erection. *Sal.* 10. *Mich.* 10 IV. 3. *Vind.*

When a record of the same court is pleaded in abatement, and the plaintiff demands order of the record, and 'tis not given him in convenient time, the plea ought not to be received, but the plaintiff may join his judgment, and the rule was, that 'twas the defendant gave order of the record, and judgment should be for the plaintiff. *Cart.* 454. *Trin.* 10 IV. 3. B. R.

New contingent damages shall not give a new action in affinities, but there shall be a former form 11 *Trin.* 13 IV. 3. B. R.

The plaintiff counted upon several promises for work and labour in the parish of St. Mary le Bow in London; the defendant pleaded in abatement, that before this action brought the plaintiff had labelled in the Admiralty for the same cause of action. Upon demurrers it was inscribed for the plaintiff, that this was within the rule of *Sparr's* cafe, 5 *Rep.* 62. that a priority of suits, in an inferior court, is no plea to an action brought in any of the courts at Westminster; and the whole court gave judgment against the defendant, *quod respondent sufer.* *C. Lott.* 378. *B. Booth* 163.

The defendant pleads, that the plaintiff brought a former suit for the same matters, which suit is still pending for ought he knows to the contrary. It was inscribed for the plaintiff, that this plea was not good, because the defendant does not positively aver, that there is still pending; and no issue can be taken upon his knowledge to the contrary. But the Maller of the Rolls allowed the plea, because the defendant [plaintiff] ought not to have let it down to be argued; for by that he admits that the former suit is depending; but the plea ought to have been made in court, for examining the case there was a former suit depending for the same matter or not; and said, that there needs no positive averment, that the former suit is still depending, for that is examinable by the maller; and the defendant never swears a plea of a former suit depending, but it is always put in without oath. *F. & S.* 1624.

The general rule is, that the party shall not be twice vexed for the same cause of action; but then it must appear, that the court first possest the cause had jurisdicdon, and nothing shall be intended to be within the jurisdiction of an inferior court, but that is averred fo to be. *Per Eyre, Ch. J. Trin.* 5 *Gio.* 2. *Gibb.* 314. See 12 *Vinc. Abr.* tit. Former action.

*Formagnus.* Signifies the fees taken by a lord of his tenants bound to make in his common oven, as is usual in the Northern part of England, or for permission to use them. *See Lutwidge.*

*Forprifum,* (from *prifum,* from the Sax. *prifum,* or *prifum,* an action) *Whoredom,* the act of incontinency between single persons; for if either party be married, it is a matter. *See Lutwidge.* The former offense herein was punished with three months imprisonment; the second was made felony by an act made in 1650, cap. 10. *Selden's* Collection. *See Leonoedus.*

*Forprifus.* (From *prifum,* from the Fr. *fs,* i.e. extra, and *prif,* captia,) An exception or reforation: In which the party covenants, to give up a brute of his for the price of it, and so forth; and he may sell it in conveyances and leases, wherein excepted and saveprifed is an usual expression. *Forprifus* in another sense is taken for any exception, and is the same with *forcopium,* as appears in *Tourn,* anno 1385. *Tutum pratom,* &c. *For prifus* or *preceptus* in *excubium pro places* dextra. *Cowell,* edit. 1717. *Forprifus.*


*Forshet.* *Forstken.* *Cowell,* edit. 1727.

*Forshet.* (From *shet,* from the Sax. *shet,* before, feast, a part or portion,) The outer or fore-part of a furlong, the skirt or flip or small piece that lay next the highway.


*Forshetker,* An attorney or advocate. *Cowell,* edit. 1727.

**FOS**


Foster, was a learned lawyer, and Lord Chancellor in the days of Hen. 6. He wrote a book in commendation of our Common law, intitled, De Laudibus Legum Anic. Cowell, ed. 1727.

Fowtle, Power, dominion, or jurisdiction. Cowell, ed. 1727.

Fouche, or Fontaine plebium, is when many judges are assembled to do it. Si justification fuis judicis di- mitiunt (judicis) sed foamiis terrarum demulti infra excitatium placum tertium competent. Leg. H. c. cap. 29.

Fortifications, To be made on the sea-coast in Corn- wall, c. 4. b. 8.

Land to be purchased for the fortifying Partsmouth, Chatham, and Harwich, 7 Ann. c. 26. 8 Ann. c. 21.

Lands for the fortifications of Plymouth and Chatham were vested in trustees, 31 Geo. c. 2. c. 39. sect. 1.

Compensation given to the proposers, 32 Geo. c. 2. c. 20.

Monies payable to persons under legal disability to receive the same, to be paid over to deputy remembrancer, 33 Geo. c. 2. c. 11. sect. 14.

Lands in Kent, Suffages, and Southampton, on which forts have been erected, vested in trustees, 2 Geo. c. 3. c. 53.

Compensation made to the proposers of those lands, 4 Geo. c. 3. c. 35.

Fortietia, Fortilicet, and Fortilect. (Fortilicium, vel fortilegium, & fortilectum.) Signifies properly a little fort, built or made rather to preserve the person of the owner and his goods, than to underlie a siege. Within the towns and fortilities of Berwick and Carlisle, Stat. 11 Hen. 7. c. 18. Cowell, ed. 1727.

Fortijjii, A fortis, or mixt fortis, is an argument of life used by Litton to this purpose: If it be in a feoffment paying a new right, much more is it for the restitution of an ancient right, &c. Litt. Leg. 253, 260.

Fortijlc, (Fr.) Signifies a place of some strength.

Old Nat. Brew. fol. 45.

Fortuna, is that which is called in our law tresatre- trove, i.e. Thesaurum decente fortum insenese, Inquire- rendum et per 12 juratores pro Reg. &c. good seileter praenuntiati, & ornate fortum, abolationes, appelisa. &c. Spelman tells us it signifies fortuus accipiet, Cowell, ed. 1727. See Starebarta.


Fourshe. A long flipp of ground. Cowell, ed. 1727.

Forta, A ditch full of water, where women committing for depoys were drowned, being hanged. Now &c. in annua tenentium fuit omnem ab antiquis legum la- bures suicient, videlicet, servaon, fuliam, furcatis, & flumina. In another fene'sCette taken for a grave. Cowell, ed. 1727. See Fatta.

Follett, Grains cut or mowed for hay. Cowell, ed. 1727.

Fortatae operativo. Foole-work, or the service of labouring, done by inhabitants and adjoining tenants for repair and maintenance of the ditches a round a city or town, for which some paid a contribution called fixulation. Cowell, ed. 1727.

Fortalita, (Lat.) A ditch, or place fenced with a ditch or trench. Fisualtum in another fene's, is taken for the obligation of citizens to repair the city ditches. Cowell, ed. 1727.

Fortallum, The same with Folallum. Cowell, ed. 1727.

Fortallum. (Folstalum) A small ditch. Cowell, ed. 1727.

Fortallum, (from futs, digged.) Was once all of the four principal highways of England, to called, be- cause supposed to be digged and made passable by the Romans, and having a ditch on one side. Cowell, ed. 1727. See Wallingford-street.

Forterland, I Land given, sifeged or set forth for finding of food or vétuals for any monasteries, for the monks &c. Cowell, ed. 1727.

**FRA**

Follettenc, Nutiall gifts, which we call a jointure; from the Six. fisur-leum, clarum exhibitis, that is, a fiupend which the wife hath for her maintenance. Cowell, ed. 1727.

Fother, or Fother, (from the Toetonic fides,) Is a weight of lead, containing eight pigs, and every pig one-and-twenty stone and a half, which is about a ton, or a common wain or cart-load. Speight in his At- tribution upon the law, to the 17. and 18. of Hen. 3. tells that the weight of a field of lead, which is there laid to 2000 weight; as the mines 'tis 2000 weight and a half; among the ploughers at London 1500 and a half. Cowell, ed. 1727.

Fouencl, A weight of lead of ten stone or seventy pounds. Cowell, ed. 1727.


Fowderate, To carry away fodder, to forage. Fict. lib. 3. c. 41. para. 13.

Foundation, The founding of a college or an hospital, is called Foundation, quasi fundari, or fundamentari- basis. Co. Rep. 10. See College, Hospital, Founda- tories.

Founder, (from fonder, to pour out,) Is he that melteth metals, and makes: any thing of it, by calling it into a mould, 17. Eliz. c. 2. cap. 1. We also say, That whoever builds and endows a college or hospital is the founder. Cowell, ed. 1727.

Founding-hospital. See Hospital.

Foundating, To fawn as a deer. Quis venantia isse in foro, or isse damnati fuisse fortuit. Fulta, lib. 2. cap. 41. para. 23.

Fourth, (Fr. Frazerie, to delay, put off, prolong) Signifies a putting off, prolonging, or delaying of an action. In the Nature of Wills, cap. 43, are these three words, “Joint-tenants shall not more four and but only shall have one effe.” &c. And in last, Ed. 1. cap. 10. it is used in the same sense; “ The defendants shall be put to answer without fourething,” 23 Hen. 6. c. 2. See 2 part. Litt. fol. 250.

Fourth, (in Latin ‘tis called farceous, and signifies, where a man and his wife, or each of them, canst an effe, then ‘tis called farceous, because ‘tis twofold, Caesat ur & mulier implectantur, quaemEat effenius alternas alteram comparat, quamulius fur- care poffit; & cum ultra non poffit, conuersum eum effe- niam in juxta ficta; altera eum tantum omnium effe- niam de multisibus haberi poffit. Hengham Mag. cap. 9. Cowell, ed. 1727.

Fourgeld, or Folcled, (from the Sax. fis, pet, and geldion, filletor, i.e. pedes redempti) Signifies an amercement for not cutting out the balls of great dogs feet in the forest. See Credited. And to be quit by pay of a flat foldgel is a nickname, to keep dogs within the forest, undawed, without punishment or fine, of the king's justice's jurisd. fol. 197. Montesqu. part. 1. pag. 86. This privilege was always allowed in Anf. Feriat. de Piebrich. 10 Ed. 3.

Frauation. The law makes no fraction of a day; and therefore if a person 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 Haw. P. C. 163.

An act of record will not admit any division of a day, but it is to be divided the first instant of the day, Arg. and judgment accordingly. Psych. 23 Ed. 16. 137.

If the King's tenant pays his rent upon the day, the King's succesor shall have it paid over again; though otherwise it is in case of a common person. Mich. 17. Fac. 16. Rep. 17. c. 4 Ed. 35.

In perplexation 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.
of, but in case of necessity, Per Roll. Ch. J. Sti. 119. 
Trin. 2 d Cor. B. R.
Bishop collates the same day that he dies, his successor shall present. Arg. Hard. 24.
Insuring for H.'s life; H. died on the last day; per Holt Ch. J. the law makes no fraction in a day; yet, in this, we make no fraction of the coming day, and before the end of the last day, the insurer is liable, because the insurance is for a year, and the year is not complete till the day be over; yet, if A. be born on the 3d day of September, and on the 2d day of September, 21 years afterwards he makes his will, this is a good will, for the law will make no fraction of a day, and by consequence he was of age. 2 Saiz. 629. Trin. 11 H. 3. B. R. at Allithill, per Holt, Ch. J. in Sir Robert Howard's cafe.


France or engines for flockings and frame-work knitters. Penalties for exporting frames or engines for flockings, &c. H. 8. W. c. 3. Fr. fac. 8. Frame-work knitters are within 12 Geo. 1. Concerning combinations of workmen, 12 Geo. 1. c. 34. sect. 8.

Framepale fences. Are such fences as any tenant in the manor of Writtle in Essex hath against the lord's demesne; whereby he hath the wood growing on the fence, and may use them as he can possibly use the top of the ditch with the hulse of his own, towards the repair of his fence. Chief Justice Brapton, whilf he was a praficrt and stewart of this court, acknowledged he could not find out the reason why these fences were called framepale. It may come from the Sax. scenful, pro- ffe, or may be contraction of framepale, because the roles are free for the tenant to take. Cowell, edit. 1777.

Franche. The realm and people of England shall not be subject to the King or kingdom of France, 14 Ed. 3. fl. 5. Commerce with France prohibited, 3 & 4 Ann. c. 13. Entering into the French King's military service as a commission to a non-commission officer, without leave under the sign manual, made felony, 29 Geo. 2. c. 17. No virtuals to be exported from the plantations during the war with France, except to Great Britain or Ireland, or of some of the plantations, 30 Geo. 2. c. 9.

Francifco (liberti libertatis) A free man. Scinti me defideci, vom villani & fratriciani, nomine hamone, & com tenueis eorum, Gr. Charta H. 4. 2. in M. Mon. Angl. 1 par. fol. 442. b. And in Domfoyle we find franci bome used for a freeman. Cowell, edit. 1777.

Francifco royal, 15 R. 2. c. 4. and 2 H. 5. c. 7. in fine, feemeth to be where the King's writ runs not, as Chipher, Durborn, &c. which are called Seignioris royal, Anna 21 H. 3. 4. And formerly Thomas and Examples in Northumberland. The authority of the New Terms of the Law faith, That a francifco royal is, where the King granteth to one and his heirs, that they shall be quit of toll, or such like. Cowell, edit. 1777. Francifco is a royal privilege in the hands of a subjefit. Fin. 38. Francifco royal shall not protect felon, St. Wulfm. 1. 3 Ed. 1. c. 9.

Questions of non-ubber and abuser of liberties, shall be diculuted by the treasurer and barons with the affiftance of the other judges, St. fereia conciff. 13 Ed. 1. fl. 6. liberty confirmed that had been long used, St. Sote warr. 18 Ed. 1. fl. 7.

Inquisitions to be taken before granting liberties, St. de libertat. perquirendent. 2 Ed. 1. fl. 2.

Hundreds, &c. shall not be let at too great lani, Artic. super cart. 28 Ed. 1. cap. 14.
How procefs shall be awarded on the plea of a deed, &c. made within a franchife, 9 Ed. 3. fl. 1. c. 4.
Liberties restraining the freedom of merchandize, against the common utility, and void, 2 R. 2. fl. 1. c.
Where lords are named diffiders in affifts to ouft them of their franchife, the writ shall abate, 9 H. 4. c. 5. or where default is made by collusion, 8 H. 6. c. 25.

Proper of pardoning treason and felonies, and other liberties re-united to the crown, 27 H. 8. c. 24.

Franchifies of the late abbess revived, 32 H. 8. c. 12. Clerk of the crown prohibited to issue procefs on inquisitions for felonies good, &c. against lords, &c. who have had their charters annulled and allowed, 4 & 5 W. 4. &c.

Patentees may inrol so much of their charters as concerns the particular liberties claimed, 4 & 5 W. 4. & M. c. 22.

Sheriff full upon request name a deputy to refide in a franchife, 13 Geo. 2. c. 15. sect. 6.

Confable jurisdictions in Scotland refused, 20 Geo. 2. c. 43.

For more learning on this subject, see 21 Vin. Abr. tit. Franchifies.

Franchise, Was the general appellation of all foreigners, unless they could prove themselves to be Englishmen, 15 Ed. 3. c. 41.


Frank, Was a French coin worth about a French flilling; but in computation was twenty fähls, which is a libere, or pound, and about twenty pence in our money. Cowell, edit. 1777.

Frankalmoin, (Libera Eledomenia) Signifies a ten-ure or title of land or tenements befowed upon God, that is. given to such people as devote themselves to the service of God, for pure and perpetual alms; whence the feodors or givers cannot demand any terribral service, so long as the land, &c. remain in the hands of the feeholders. With this agree the Grand Coutumney of Normandy, cap. 32. See Braddon, la. c. 5. & 10. and F. N. B. fol. 211. Britton makes another kind of this land, given in alms, but not in free alms. As if an abbe, &c. holds lands of his lord for certain divine service to be done, as to sing every Friday a mass, or do some other thing; and if such divine service be not done, the lord may diltrain; and in such case the abbe ought to do fealty to the lord; and therefore it shall not be said a tenure in frank-almoine, but a tenure by dedication. For then it cannot be said it is not a certain service as is required in ancient demesne according to the custum of the manor. And again, in the same book, fol. 14. there is a note to this effect, that the lands which were in the hands of King Edward the Con- feffer at the making of Domfoyle-book, is ancient demesne, and that all the rest of the realm is called frank- feer, whereas Fitzherbert agrees in Nat. Frev. fol. 161. so that by this rule all the land in the realm is
Frankland (Firma litora) is kind or tenement, where the nature of fee is changed by feoffment out of
knight's-service for several yearly services, and whencesoever neither homage, wolfip, marriage, nor relief may be
demanded, nor any other service not contained in the
feoffment. Britton, op. 66, num. 3. See Ferefringe.

This was called frank-pledge, without the circuit deemed
demo, because it commonly consisted of ten households,
and every particular person, thus mutually bound for
himself and his neighbours, was called decennier, because
he was of one decennon or another. This cultum was so
loved that the thieftis at every county-court did, from
time to time, to the oaths of young or otherwise
attained the age of fourteen years, and fee that they were
comprised in some dozen; wherupon this branch of the
thief's authority was styled Fista frank pliagi, View of
frankplege. See the statute for view of frank-pledge,
made 18 Ed. 3. See also Deditio, Lec, Clitw of
frankplege, and Frangipani. 

We borrowed this
cultum of the Lombards, manifestly appears in the second
book of Feda, cap. 5. Upon which read Helmant, &c.

What articles were wont to be inspected in this court,
in Heri's Mirror of Justice, 1. cap. de the seate
des franknerfs; and but these articles were in former
times, see in Feda, lib. 2. cap. 8, and 9. See also
lib. 73.

In an ancient charge of the inquest of wardships,
in every ward in London, it is said, and if there be any person
within the ward that is under frank-pledge, that is to
say, under land and tone, &c. This may also be seen
in Bract, lib. 3. trac. De coron, cap. 16, viz. Omnes homini
free liber, free servir, out of vel ab intest off en franks
aut de dominis mancipiis, fit alquius ipsius item domini
fuus, qui non pro tene ad omnem quam ad aliun, vel
quod habuisset quod sufficiente pro trango-plegio, fist dignitatis,
vel ordinis, vel liberum tenementum, vel in ciuitate rem
annulamenti, Grewell, ed. 1727.

Franktenements. A pollution of freedhold lands and
tenements. See Freehold.

Frauletta. A wood or woody ground. 1. inf. fol.
4. 8. I take it to be a corruption of fraxintinum, a wood
where ash grows.

Frateria. A fraternity, brotherhood, or society of
religious perfons, who were mutually bound to pray for
the good health and life, &c. of their living brethren,
and the souls of those that were dead. In the flat tes of
the cathedral church of St. Paul's in London, collected
by Ralph Baldock, deed, 1215. there is one chapter De
fraterbn benedictis & S. Paul, &c. Grewell, edit. 1727.

Fraternity. Is some people of a place united to
gether in respect of mercy and benefits into a company,
and their laws and ordinances cannot bind strangers,
for they have not a local power or government.

Fratres uniuersiti. A bland and brother; so Mulvpyr
uses it; and so is used in old deeds. Grewell, edit. 1727.

Fratres. The fons of two brothers. Succipi fratrices
et regnas, &c. Grewell, edit. 1727.

Fratres conjuxi. Are fourt brothers or companions.
Similes, Dunton, p. 81, 109, 203, and Howen.
Dun. pag. 445. Sometimes they are so called who were
sworn to defend the King against his enemies. Leg. IV. 1.
cap. 59. Praecipuius aut omnes liberis benefici sunt fratres
conjurati ad moriarum caput & regni regnum contra
inimicos nostrorum principis. &c. Grewell, ed. 1. cap. 35.

Fratres, gites. Were friars wearing their black and
fleece garments. They are mentioned in Walsingham, pag. 124.
Viz. In quadam carceri qui fuerat quidam fratres quos
fiercipes vocatur appellantes.

Fratricius. Is that part of the inheritance which
comes to the eldest brother; whatever they polic'd of
the father's estate, they polic'd it in their own names,
and are to do homage to the elder brother for it, because
he is bound to do homage for the whole to the superior
lord.
lord. 

Fraud. (Frauds.) Is deceit in grants and conveyances of land, and bargains and sales of goods, 

fraud, covin, collusion and deceit, are often used as synonymous words, and in whatever shape or form they appear in, are always deemed odious in the eye of the law. 

If fraud, covin, bringing false evidence is punishable, by being committed in the course of a legal transaction, and to the prejudice of another. 

1. What acts are deemed fraudulent in the courts of Law, the 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 defeat creditors and purchasers within the limits 13 & 27 Elizabeth. 

4. Other frauds relating to frauds and offenses committed upon them. 

5. In what court the fraud is punishable, and in what courts the wrong-doer is further punishable than by making void the fraudulent act. 

1. What acts are deemed fraudulent in the courts of Law, the not within the express provision of any act of parliament. 

Here it may be laid down as a general rule, that without the express provision of any act of parliament, all deceitful practices in defrauding or endeavouring to defraud another of his known right, by means of false and deceitful device, contrary to the plain rules of common honesty, are condemned by the common law, and punishable according to the heinousness of the offence. 

Dyer 295. 

As causing an illiterate person to execute a deed to his prejudice, by reading of it over to him in words different from those in which it was written, 1 Sid. 312. 

So if one perjures a woman to execute writings to another as her truftee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to convey a judgment, 1 Ed. 4. 

Alfo it is a rule, that a wrongfull manner of executing a thing shall avoid a matter that might have been executed lawfully. 

As if a man, that has a right of action to certain lands, by covin causes another to out the tenant of the land to the intent to recover it from him; and he recovers accordingly against him by action tried, yet he shall not be recovered to his ancient right, but is in the estate of the man who was the outher. 41 Ed. 28. 44 Ed. 29. 1 Rol. Abr. 420. 549. 

If one so manifies 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 country accordingly, yet this is of no effect against the dower, but he may outher him because of the covin. 44 Ed. 29. 1 Rol. Abr. 459. 

If goods are sold in a market-over, by covin, between two, on purpose to bar him that has a right, this shall not bar him thereof. 2 East. 713. 

As to frauds in contracts and dealings, the common law subjects the wrong-doer, in several instances, to an action on the covenant; as a person having the possession of goods tells them to another, affirming them to be his own, when in truth they are another's, an action on the covenant. 1 Rol. Abr. 90. 1 C. R. 474. 

But if A. poifelled of term for years, offers to sell it to B. and says, that a stranger would have given him twenty pounds for this term, by which means B. buys it, the' in truth A. was never offered twenty pounds, no action on the covenant, the B. being thereby deceived in the value. 1 Rol. Abr. 91. 101. 1 Sid. 446. 1 East. 20. 

But if on a treaty for the purchase of a house, the defendant affirms the rent to be thirty pounds per annum, whereas in truth it is but twenty pounds, and thereby the plaintiff induced to give to much more than the house is worth, an action on the covenant; for the value of the rent is the matter that lies in the private knowledge 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 Ed. 211. 1 Lev. 156. 1 Sid. 146. 1 Ed. 510. 518. 522. S. P. adjudged. 

If a visitor fells wine, which he warrants to be good and not corrupted, or if a person fells any commodity which he warrants to be good, if it proves otherwise, an action on the covenant lies against him. 1 H. 6. 18. 

If A. is employed by B. to fail from England to the Indies, and covenants that he or his servants will not hereafter import any cullie, and A. retains C. as his servant in this voyage, and acquaints him with the covenants; and whatsoever C. thereby and fraudulently brings thence and delivers, shall be an action against C. for the naked action lies by a matter for a base breach of his contract, yet if a servant does any thing falsely and fraudulently to the damage of his master, an action will lie. 1 Sid. 298. 2 Rol. 88. 3 C. 1 Lev. 138. 

If A. be excommunicated, and the letters of excommunication are brought to the parson of the parish to be read and published in the church against A. and the parson having notice to B. infers his name instead of the name of A. and promesses him excommunication, an action on the covenant lies. 1 Rol. Abr. 100. 6 C. 895. 

If a man clafles the estate of another into the lands of f. whereby he is subject to the action of f. an action on the covenant lies against him. 1 Rol. Abr. 100. 101. 4 C. 525. 3 C. 

If a grantee against B. and J. S. with an intent to defeat him of the benefit of it, persuades B. to acknowledge a judgment against a stranger, to whom in truth he owed nothing, and thereupon his goods are taken in execution, & A. may bring an action on the covenant against J. S. on this fraud and combination. Carith. 3. 4. 

Brings lands alienated to another, shall be an action against C. for the naked action lies by a matter for a base breach of his contract, yet when the covin appears upon the return of the diligent the land so alienated shall be extended. 1 Rol. Abr. 549. 

If a man makes a feoffment to the use of his fon, an infant, and not in consideration of marriage, & A. and B. are conveyed covenants to make a provision for which he is attainted, this land shall be forfeited; for the feoffment was fraudulent against the King. 2 Rol. Abr. 34. 

But if the seoffment had been made in pursuance of an 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 terms is not fraudulent, but good against the King. 2 Rol. Abr. 34. 

A. being in Neville 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 fon against the sheriff of London, it was held by Holt C. J. That the bill of sale was fraudulent; for tho' a bithe bona fine, and for valuable consideration, had been good, because the party had a property in the goods till conviction, and ought to be reasonably sustained out of them, yet this conveyance is fraudulent at common law, for it cannot be intended to any other purport than to prevent a forfeiture, and fraudulent the King. Skin. 357. 

A man comes by hostages carried 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 plaintiffs there. 1 Rol. Abr. 519. 4 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 relevin,
and thereby has the horse delivered to him by the thief,
or if one intending to rifle goods, gets physical possession
of them, by the force of a judgment obtained, without any of
the least colour of title, upon false affidavits, &c. 2 Inst. 188.
H. P. C. 63. Kel. 43. 1 Sid. 254. Royn. 276.
If A. on a quirrel with B. tells him, that he will not
strike him, but that, by giving him part of his goods
to his pretended second wife, if he eludes the
law, accordingly B. meets him the next day in the road to
the fame town, and affulls him, whereupon he fights, and
A. kills him; he is guilty of murder, for he shall not clude the judge
of the law by such a pretence to cover his malice. H. P. C. 48.
1 Hawk. P. C. 81.
If B. challenge A. and A. refuse to meet him; but
in order to evade the law, tells B. that he shall go the
next day to such a town about his business, and accordin-
gly B. meets him the next day in the road to the
same town, and affulls him, whereupon they fight, and
A. kills him; he is guilty of murder, unless it appear by
the whole circumstances, that he gave B. such infor-
mation to confer the opportunity of fighting. 1 Hawk. P. C. 81.
If a person takes a lodging in a house, under the co-
ourse thereof to have the opportunity of rifling it, and to
elude the judge of the law, by endeavouring to keep out of
the letter of it, by gaining a pollution of the goods,
with the help of false affidavits, and concealing the
thing as any other felon, inasmuch as his whole in-
tention was to defraud the law. Kel. 24, 81. 1 Shaw.
50, 51.
A man takes a wife, and afterwards marries another,
his full wife living, and by giving part of his goods
to his pretended second wife; if it seems this is a fraudu-
 lent gift within 13 Eliz. and by the Common Law too,
with respect to creditors, because made without any valuable
consideration; for the second pretended marriage is so far from
coming under the notion of a consideration, that it is
merely a contract. 2 Lem. 25.
A man has a judgment for a jilt debt against A. and
takes out a false facias, and gets the thief to feize the
goods, but would not let him proceed further, but suf-
fers the goods to remain in the custody of A. the debtor,
B. who has also a judgment against A. for a jilt debt,
takes out a false facias, and the question was, 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 thief might very well return nulla bona upon it. Farf. 37.
If B. be the judgment in debt against J. S. and he
suffers himself to be outlawed for felony with an intent
to defraud his creditors, and afterwards he purchases his
pardon and hath restitution, the creditor may well take
execution for this apparent fraud. Dray 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 main fraud were one of the chief branches
to which the jurisdiction of Chanery was originally con-
fined. 4 Litt. 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 inferring the most remarkable
cases, where the benefit of the parties have been relieved against fraud and impostion.
2 Dac. Ab, 597.
As where A. being tenant in tail, remainder to his
brother B. in tail, A. not knowing of the intail, makes
a fetlement on his wife for life for her jointure, without
leaving a third of her bene which was to be given to the
intail ingrofes, but does not mention any thing
of the intail, because, as he confided in his answer,
if he had spoke any thing of it, his brother, by a
recovery, might have cut off the remainder, and barred him;
and alfo after the death of A. B. recovered in eject-
ment against the widow by force of the intail; yet the
was relieved in Chanery, and a perpetual injunction
granted for this fraud in B. in concealing the intail,
which if it had been disclosed, the fetlement might have
been made good by a recovery. Proc'd. Chanc. 35.
Purch v. B. 2 Lem. 259. S. C. and affirmed in the
house of lords.
So where a mother being absolute owner of a term, the
same 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 go to him to his mother's death, and is a
witnes to the deed, which is, after, to be entered,
that the term is settled on the issue of the marriage after the
mother's death, and she was compleated in equity to make
good the fetlement. 2 Vern. 150.
If A. by a marriage-fetlement being tenant for life of
a certain mill, remainder to his heir for tail, and the
son who knows of the fetlement, encorages a person to
take a lease for thirty years of those mills, and to lay out
considerable fums of money in new building and im-
proving them, in order to reap the advantage thereof
after his father's death; this is such a fraud and practice, as
ought to be fully convicted in equity; and it was there-
deto was decreed in this case, that the father should collec-
the residue of the term that remained unexpired after
the father's death. 1 Vern. 357.
So where a younger brother, having an annuity
of 200l. per annum, charged on lands by his father's will,
said to belong to himself, to the value of 120l. S. C. is en-
couraged to purchase of the elder brother, who told him,
that though he had heard that there was a fetlement
which had invested those lands out of which it fitted, that
yet he had constantly paid this annuity, as also 2500l.
charged by the same will to his filters; and the elder
brother afterwards gets the fetlement into his hands,
and endeavouring thereby to avoid payment of this
annuity, it was decreed in favour of the purchaser, purely
that the annuity should still be paid on the encourage-
ment given by the elder brother. 1 Vern. 136. Bibb and
North. 2.
So where lands in mortgage running through three
decents, and the peron intitled to redeem, not know-
ning how much was due for the interest, is informed by
the heir of the mortgage that it was considerably les-
 than really it was; whereupon he settles it upon his
marriage, which is, after, to be voided by a statute; but
that those who derive under this fetlement should redeem
accordingly, without being obliged to pay the sum con-
If A. has a prior intailment to an estate, and is a
witnes to a subsequent mortgage, but does not disclose his
own intailment; this is such a fraud in him, for which
his intailment shall be polpned. 2 Vern. 151.
Clare and Earl of Bedforde, cited to have been decreed.
So where a councell having a facias from A. advices B.
to lend A. 1000l. on a mortgage, and draws the mort-
gage, with a covenant against all incumbrances, and
conceals his own facias; and it was held, that the fac-
sate should be polpned to the mortgage. 1 Vern. 376.
Druyer v. Baldwin.
So if A. being about to lend money to B. on a mort-
gage for 200l. the intailment of D. had a prior mort-
gage, whether he bad any incumbrance on the mort-
gage, after, if it be proved that C. went to him accordingly, and
that D. denied that he had any, D.'s mortgage shall be
So if A. having a mortgage on a leasehold estate, lends
the mortgage deed to the mortgage, with an intent to
borrow more money; that is such a fraud in the mort-
gagee, for which his mortgage shall be polpned to the
subsequent intailment. 2 Vern. 726. Peter and Ruff-}
sel Mor. Eq. 321. S. C.
If a mortgagee, who being in the possesstion intending to
obtain the greatest part of his estate to his godson, and the oth-
other part to his wife, is persuaded by the wife to nominate her
for the whole, on a promiss that she would give the
godson the part deigned for him, it will be decreed
against the wife on the point of fraud, though there was
no memorandum thereof in writing purporting to the statute of frauds and perjuries. *Preced. Chanc. 3. Drumright and Baines.*

So where the defendant, on a treaty of marriage for himself and another with the plaintiff, signed a writing composing the terms of the agreement, and afterward declining to elude the force thereof, and to lose his by 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 defendant, by act of a free to see them go, by a contract to be married; and the plaintiff was relieved on the point of fraud. *Abr. Eq. 29. Holberg and Mellot.* 2 Veh. 373. S. C.

The plaintiff’s wife, before her inter-marriage with the plaintiff, being polled a term for years, as executrix to her father in law, and which was liable as alleles, 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 sale of the house in question, for the residue of the term, for 450l. whereas 210l. was to be applied in discharge of a mortgage therefor to one J. S. and the remaining 240l. was to be paid to the plaintiffs; accordingly the plaintiff executed an affidavit 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 in due time the payment thereof to J. S. the mortgagee, and of the remaining 240l. to the plaintiff; and for the non-payment thereof the plaintiffs brought their bill to have a specific performance and payment of the money accordingly; the defendant, by his answer, admitted the whole cafe to be true as set forth; but insisted, that he ought not to be bound thereby, for that the plaintiffs could not make him a good title, they having by 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 demand of the balance of the house, the defendant brought his cross bill; the plaintiffs by their answer admitted there were such articles, but insisted, that the house lying in Middlesex, those articles were never registered in the Middlesex office, and therefore void as against the plaintiff; but on a hearing at the Rolls, the whole of the Rolls decreed the bill as good, and the plaintiffs dispossessed; 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 case likewise to have his title, by reason of the plaintiff’s fraud in concealing the articles; which decree was affirmed by Lord Chancellor Lory. *Abr. Eq. 35. Beniff vs. Smith.*

So in a case between two purchasers of lands in Yorks, 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 purchaser registered; 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; the device of these acts being only to give the parties notice, who might otherwise without such registry be in danger of being impeded upon by a prior purchaser or mortgage, which they are in no danger of when they have notice thereof in any manner, though not by registry. *Abr. Eq. 358. Blade and Blade.*

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 preordained time, some of the creditors, being acquainted with the agreement, and being holding under hand and seal, he brought his bill to compel a performance thereof; but it appearing in the cause that A. to draw in the rest of the creditors, had made an under-hand agreement with some of them, who were feigningly to accept of the composition, to pay A. 300l. on the first and second, and which A. had not been his younger children, promising to do for them himself; this is such a fraud, for which equity will decree the heirs to give them such provision.
vifin himself. Prcsod. Chanc. 4. Chamberlain's case, cited to have been decreed.

So where tenant in tail is prevented by the infe in tail from suffering a recovery, in order to provide for younger children, by his provisiou to do for them himself; equity will compel him to do it after his father's death. Prcsod. Chanc. 5.

If a mother having a right to dower, to encourage a marriage of her son to A. B. releases her dower, and the relation is known to the wife and her relations, it shall bind the mother, though the release was obtained by a fraudulent suggestion. 1 Vern. 19, 20, 31, 32.

If a man charges lands in D. with a portion for a daughter by a first'vender, and then marries, and fetties part of those lands for the jointure of a female, who marries, and the charge of the portion is fettied as the jointure; that the portion would take place of the jointure, by will give others lands in lieu thereof, and the wife combines with her son, who is heir to A. to defeat this fettilement and provisiou on the daughter, by adhering to her jointure, and insisting, that the provisiou on the daughter was voluntary and fettilement to her; and that therefore she was not bound to accept of the devise; the daughter will be relieved in equity. 1 Vern. 219.

A widow can take a deed of settlement of her estate, and make a will over to her husband, who was not provisiou to such fettilements; and it appearing to the court, that it was in confiance of her having such estate, that the husband married her, the court fct aside the deed as fraudulent. 2 Chanc. Rep. 81. Howard and Hooker.

But where a widow took a mortgage on a second bond, and fettied over the greetest part of her estate to trustees, in trust for her children by her former husband; and tho' it was infilled, that this was without the privity of the husband, and done with a deling to cheat him, yet the court thought that a widow may thus provide for her children before the put herself under the power of a husband; and it being proved that 8000l. was thus fetted, and that the husband had preffured the deed, he was decreed to pay the whole money, without directing any account. 1 Vern. 408. Hunt and Mathews.

3. Of fraudulent conveyances to defeat creditors and purchasers within the statute 13 & 14 Elizabeth.

It being the Common law, if a man had a right and title to a thing, or a just debt owing to him, he might transfer it to any other person, and disavow it to the defrider of that right or debt; as if a man had a right to goods, and be that had them sold them by covin in a market-ovett, to alter the property of them; or if one paffed away goods to deceefe a creditor, these acts might have been fet aside; but if the gift were precedent to the right and title, then there was no way in such case to fet aside the conveyance. 3 Co. 83. Mor. 638. Dyer 295.

Ca. Litt. 290. a. b.

But now, by the 13 Eliz. cap. 5. 4. For the avoiding and abolishing of frauds, covious and fraudulent fcoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, now of late more commonly practised than heretofore; which fcoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, have been and are devised and contrived of malice, fraud, covin, collusion or guilt, to the end, purpose, and intent to defray, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfettitures, heritages, mortuaries and reliefs, not only to the let or hindrance of the due course or execution of law and justice, but also to the overthrow of all true and plain dealings, bargaining and chevalie.

It is therefore enacted, that all and every fcoffments, gifts, grant, alienation, bargain and conveyance of lands, tenements, hereditations, goods and chattels, or of any of them, and of any sort of money or goods, chattels, or other chattels, or of any of them, by writing or other

Vol. II. No. 80.
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; and as consideration for the said land and premises, and for the said grant, or by them or them revised, made void, or altered, according to the power and authority referred or expressed unto him or them, in and by the said fictitious conveyance, affinities, gift, grant, etc.) that then the said former conveyance, affinities, gift, demesne and tenements, and all land, lands, and hereditaments to after bargained, sold, conveyed, demised or charged, against the said bargains, vendees, leasors, grantees, and every of them, their heirs, successors, and assigns, and against all and every person and persons, who shall at any time have by, from, or under them, or 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 recorded 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 held.

Where a tenant bonds the tenant pleaded nonparte, upon which they were at issue; and it was found, that before the writ purchased, the tenant enchanted divers persons, with an intent to defraud him who had cause of action to the lands, and notwithstanding the sheriff took the profits; and on this verdict it was adjudged for the defendants, that the act done in the said act was void against him. 

Cra. Eliz. 233. Leamard and Bacon.

A. being indebted to B. in 400l. and to C. in 200l. B. brings debt against him, and hanging the writ, A. being polled of goods and chattels to the value of 400l. makes a fictitious conveyance of all the goods and chattels of him then in his possession, to B. in satisfaction of his debt, but notwithstanding continues in possession of them, and sells some of them, and others of them being seized he sells his mark on; and it was resolved to be a fraudulent gift and sale within the 13 Eliz. for that such a sale hath one of the qualifications required in a sale, and is the conveying of an inferior estate, or the conveying of a thing in the nature of an estate; and it is not necessary that the party should have actual possession of the thing conveyed, and the conveyance must be declared by the creditor alone, or in his own name.


It is for the jury to find that the owner continued in possession of his goods after his bill of sale of them, this is an undoubted badge of a fraudulent conveyance, because the possession is the only indicium of the property of a chattel, which is unixed and transferrable, so there are other marks and characters of fraud, as the seller of a chattel, being a person in possession of the same, for it is hardly to be presumed, that a man will strip himself entirely of all his personal property, not excepting his bedding and wearing apparel, unless there were some foetid correspondence and good understanding fetter entered between him and the vendee, for a private occupancy of all or some part of the goods for his support; also a secret manner of transacting such bill of sale and usufrual clauses in it, as that it is made honestly, truly, and bona fide, are marks of fraud and collusion, for such an artful and forced drefs and appearance give a suspicion and fix to the defendant's character.

Cra. Jac. 131, 132.

It is not necessary that he who contrived the debt should make the fraudulent conveyance; for if a man binds himself and his heirs in a bond, and lands depend to his heir, who makes a fraudulent conveyance of those lands, the creditor shall avoid it. 3 Co. 60.

If a person, intending to deceive a purchaser, conveys by deedintroled his lands to the King, and afterwards, for valuable consideration, conveys to J. S. the purchaser shall avoid this conveyance to the King by the 27 Eliz. for although the statute does not by express words extend to the King, yet being a general law, and made for superseding fraud, it shall include him. 2 Co. 54- 11 Co. 74.

So if A. being tenant in tail, remainder to B. in tail or life under an apprehension that A. defees to suffer a recovery, and destroy his remainder, by deed introled conveys his remainder to the King; yet if A. for valuable consideration afterwards by recovery conveys the estate to J. S. and dies without issue, the purchaser shall not avoid this conveyance to the King as fraudulent within the 27 Eliz. 11 Co. 74. 3 8.

In trespass against a bailiff of a manor for disfraining goods, he justified by virtue of his authority, and that by his precept he was commanded to disfrain the goods of J. S. which goods came to the plaintiff's hands by colour of a fraudulent gift of them to the plaintiff on issue, that the sale was made bona fide it was found for
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 Ambrose Tar-
well ver. Tippet.

If it is made a fraudulent lease of his lands, with
an intent to deceive a purchaser, and dies before he make
any conveyance of the lands, and afterwards his son and
heirs, 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. & c. 1 Term. 45.
6.
A. has a lease of certain lands for sixty years, if he
live so long, and forges a lease for ninety years absolutely,
and by indemnity rectifying this forged lease bargains and
ells it for valuable consideration, together with the re
right to the goods, if in this case A. is not a purchaser
within the 27 Eliz. for though there were general words
in the sale 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 bargain and title under the char
character of a real purchaser, to defeat the purchaser of
the true lease of sixty years, which A. was really posses-

A deed, though it be fraudulent in its creation, yet
by matter ex say fate may become good; if one
makes a second feoffment to another for valuable considera-
tion, and the feeoffment made to another for valuable
consideration, and afterwards the feeoffor alfo, for valuable consideration,
makes a second feoffment, the feeoffee of the feeoffee shall
hold against the second feoffment of the first feoffor.
1 Bdf. 27. 6.
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 feoffment of his estate, and among other
things he declared the trust of a term of 1000 years to be
made to B. in this case, if B. in this case, if B. in this case, if B. in this case, if B. in this case, if B. in this case,
who afterwards married J. S. a gentleman of 1000 l. per
ann., who before the marriage was advised by counsel, that
the portion was sufficiently secured; and who afterwards
on her death had, on her requell, expended 400 l. on her
funeral, but never made any feoffment on her; and A.
having afterwards the goods and goods in the corpus under the cha
character to a considereable 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 inducement to the
marriage, it made it valuable. Preced. Chafe. 377.
East-India Company ver. Cleavel.

On the clause of the 27 Eliz. that if a man sells
lands to ufe, with a power of revocation, and after
wards sells the lands for valuable consideration, that the
former ufe shall be revoked; it has been holden, that if
a man having a future power of revocation bargains and
ells the land before his power commences, yet it is
within the act; if the power of revocation be refer-
ed with the contenf of A. and he conveys his land, not
having revoked, the conveyance shall be good; if one
having a power of revocation, extinguishes it by
feoffment, and then sells, the sale 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
founded fraudulent, it must be with respect to real cre
ditors and purchasers for valuable consideration. 5 Co.
60. Mor 615.
But thoy a purchaser for valuable consideration within
the 27 Eliz. hath notice of a fraudulent conveyance be
fore, but is not, and yet after the purchase he shall avoid
it; for the statute expressly avows such conveyance, so
that whether the purchaser hath notice of them, or not,
is not material. 5 Co. 60. Gooche's cafe. Mor 615.
If A. brings an action against B. for lying with his
wife, A. affixes his honest truftees in truf to pay the
feveral debts mentioned in a schedule, and in case
other debts as he should mention within ten days, and A.
recover 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 forpus, after the debts mentioned
in the schedule, and appointed within ten days pursuant to
it, are satisfied, the deed being neither fraudulent in law
or equity, A. being no creditor at the time of executing it,
and it was confientious in him to prefer his real creditors
to one, whole debt, when recovered, was founded only
A. by bill of sale made over his goods to a trustee for
B. who lived with him as his wife, and was so required,
and he also purchased a lease of the house wherein he
wetl, in the name of a truftee, and declared the trust
thereof to himself for life, then in trust for B. during the
reduce of the term; and this bill of sale was held fraudu-
 lent as to creditors, but as to the declaration of the
trust of the term, the court held it good, and not liable
to A.'s debts, the term being never in him, and being so
truttled at the time it was purchased, and A. might have
given the money to B. who might have purchased it for
herself, and in her own name. 2 Term. 490. Patter
and Lady Lidley.

Fraudulent conveyances and gifts are only void against
purchasers and creditors, and shall bind the parties them
selves, and their representatives. Caz. Jurf. 270. See
2 And. 175.

And therefore where A. made a fraudulent sale of his
goods to B. and delivered possession 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
these goods, that the administrator could not plead the
statute of Frauds, nor maintain the poffeffion of the
goods even to satisfy creditors. Vio. 196. He was
and
and


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 vendor shall be charged for them,
and the creditor must have his share, c. 5 Eliz. 4. 5.

Where by special verdict it was found, that A. being
poffeffed 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 201. it
should be void, and died; and that J. S. intermeddled
with the goods; after which the daughter took pofteffion
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 goods were not poffeffed by the gift, but A. was apponently fraudulent within the 13 Eliz,
and that by his intermeddling, before administration gran
ted to him, he became an executor de jure terti, and lia
ble as such; and that the law continued the poffeffion in
him from the time of his intermeddling to the time of
granting administration. Caz. Eliz. 810. Befied
and
and
and
and

Staunton. 2. And. 172. 8. C.

If A. makes a bill of sale to B. a creditor, and after
wards to C. another creditor, and delivers poftession at
the time of the sale to neither, and after C. gets poftession of
them, and B. takes them out of his poffeffion, C. can't
maintain trespas, because the first bill of sale is fraudu
lent against creditors, and fo is the second; yet they
both bind A. and B.'s is the elder title, and the naked
pofteffion of C. ought not to prevail against the title of
B. that is prior, where both are equally creditors, and
poftession at the time of the bill of sale is delivered over
to neither. Trias. 1756. Baker and Lloyd. Par 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 acts determined
upon them.

Gist, 2. cap. 9. No gift or feoffment of lands or
and other goods shall be made by fraud for maintenance;
and if any be made, they shall be held no for evasion. And the
dishonest shall have their recovery against the first disposers,
as well of their lands as of their double damages, without
redress to such alterations, so that the defendant
commission their forces within the year after the
inhabitants, and the said same in every plea of land, where to those elements
be made by land, where the fees shall be the only:
Stat. 4, Hen. 4, c. 7. The defendant now owned in
mentioned in the statute, and as to the first during his life, so as such defendant take
the profits at the time of the suit commenced. And as
to other pleas in pais of land, the defendant shall
commission his suit within the year against the
inhabitants of the freehold at the same time of the
said suit, for such freehold to have the profits at the
time of the suit commenced.
Stat. 11, Hen. 6, c. 3. In all manner of suits founded upon
novel differences, the differences shall have their recovery
against the defendants or their feefees, so as they, against
whom the suit shall be brought, take the profits,
shall be void.
Stat. 29, Car. 2, c. 3. (intitled, An act for preven-
tion of frauds and perjuries.) To all. All leases of freehold
or terms of years, or any uncertain interest in any lands,
tenements or hereditaments, shall be void, unless the
lessor's parts thereof be void, and the fees of
only, or by part 1, and not put in writing and signed
by the parties making the same or their agents thereto
authorized by writing, shall have the force of leases
will only, and shall not either in law or equity be taken
to have any greater effect; any confirmation for making
valid, for writing, c.
Sect. 2. Except leases not exceeding the term of three
years from the making, wherein upon the rent referred
shall amount unto two thirds parts at least of the improved
value.
Sect. 3. No leases, eales or intereles, either of free-
hold or term of years, or any uncertain interest, not
being copyhold or customary interest, of lands or her-
editaments, shall be void, unless granted, intended, or
being void, or in writing, signed by the parts or their
agents thereto authorized, by writing, or open to be
void for law.
Sect. 4. No action shall be brought whereby to charge
any executor or administrator upon any special promiss
to a greater 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
perjury in the testimony, or in any agreement made by
words signed to any contract or sale of lands or ten-
ements or any interest in them, 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 written, signed by the defendant, his executors
or assigns, and preserved as a record, in the
withal, or some other person by him authorized.
Sect. 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 to 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 autori-
zed.

The plaintiff declares, that in consideration the
promised to marry the defendant, he promised to marry
him that the bequest of the defendant, and has since married A. B.
which the lease to her damage 1000l. and upon an of-
sumptit obtained a verdict for 200l. The defendant moved
in arrest of judgment, that this parcel promiss is not good in
law. But after argument it was held, that this is not within
the meaning of the statute, that such parcel promiss is not
only to contracts in consideration of marriage; and that the
cafe in 3 Lev. 411. has been contradicted by later
jurisdictions. The defendant having married another per-
son, has discharged himself to perform the promiss, and
therefore the plaintiff cannot apply to the ecclesiastical
to compel this performance. The defendant deceased, but the
claim to recover damages here.

The plaintiff married the defendant without any pre-
vious settlement of her citation, which was a very con-

double parcel of land. Quo warranto harrassed between
them from after the marriage, and the defendant his will here, to
c compell him to settle her own estate to her private use;
for he, that upon his application, she, then filied on
levying the entire undisposed of her own estate, and drew up
a bill writing with her own hand to the promiss, that
she should deliver her estate to him, he, that he was
bound to observe the advice of counsel, and having writ-
his part of the statute, that he should have the undisposed
of her own estate, and that he never intended the con-
trary, but that the said command her own fortune
as the plea.

The defendant denied he signed such agreement in
writing, and as to any parcel promiss, he pleaded the
fact of hands and perjuries, 29 Car. 2, c. 3.

It was inquired on for the plaintiff, that the court fre-
cently compels the execution of promiss not solemnized
according to that statute, where fraud and trick appear,
and where the parts are not entered into execution, as
it is here by the marriage, which was the consideration
of that promiss. But Perker Lord Chancellor allowed
the plea, and said this was a breach of promiss, which is
a fact of injury that this court does not take cognizance
of, since there is no action at law. But as to execute
the real deed of settlement he had impriogned and
written, there might have made it a proper case for equity;
but there is nothing of any such deceit: the promiss he
made it on his word and promiss, without writing, and
that is the very case the statute intended. To say therefore
the agreement is to be executed in this court, before
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 for a
further charge, that in order to induce her to marry him
without a previous settlement, and to accuse the performance
of his promiss in executing it afterwards, he promised to
execute the factum 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 which were part of the agreement he made on entering into execution
of the marriage, but says he did not it in compliance with a custom
established in the Romish church (of which he was a
member) of receiving the factum on their marriages, and
to give any faith to this pretended agreement.

And as to the letter, he doth not remember the particulars,
he doth not write any of the alleged copy, and he.
If he sign any writings, it only related to some promiss he
had of making a premiss of 1500l. on her, and which
he did soon after. He then pleads the fact of
frais and perjuries again.

Lord Chancellor: The case is very much altered now,
from what it was at first. Then it flowed purely on the
parable promiss before marriage, upon which there was no
colour to relieve the plaintiff. But such parable promiss
on marriage is sufficient consideration, to support a settle-
ment made agreeable to it after marriage. This has been
always the practice, and the practice of the court is
considered in the statute of annulment, and is in fact to
establish a promiss made in writing after a mar-
riage. 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 propiss
or promises, and wrote nothing in the words withal, or
the never defined any such settlement, it does not appear
when he did it; and I am very jealous he did it fines
the amended bill. His answer to the charge of receiving
the factum in confirmation of his promiss, is not at
all fallacious. He has had more occasion to promiss
the certainty, but on that account; and though
he might receive it in compliance with the custom of his
church, yet that is very confident with his laying hold
of that solemn act of devotion, to testify his sincerity.
Therefore let the plea stand for an answer. \textit{Stron. 336.} \\
\textit{Mich. 6} \textit{Str. 1. Countey Dosterm, of Mountegro v. Max-
\textit{woll.}} \\
S. agreed to fell affale in land to \textit{O.} and wrote to him to deliver the title deeds to \textit{O.} to be having agreed to dispose of it to him. Afterwards \textit{S.} fold this affale to \textit{D.} who had notice of this transfection: \textit{O.} brought a bill against \textit{S.} and \textit{D.} insisting that the letter brought the cafe out of the statute of frauds and perjuries. But Lord Chancellor held it did not, because the agreement does not appear in it. \textit{Stron. 454. \textit{Leip. 7} \textit{Str. 1. See-}} \\
good v. \textit{Nid.} \\
The defendant before a chariet, 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, or a note in writing, for there was no delivery of any part of the goods. But the Chief Justice ruled this not to be a cafe within the statute of frauds, which relates only to con raças for the actual sale of goods, where the bair is immediately asfurable, without time given him by special agreement, and no fter is to deliver the goods immediately. \textit{Stron. 560. \textit{Hold. 8 \textit{Str. 1. Torsor v. Sir John Olnrane.}} \\
There was a para agreement for a lease of twenty-one years, upon which the lefter entered, and enjoined for fix years, and then the Earl brought a bill against him to oblige him to execute counter-part in full. This letter precedent the statute of frauds and perjuries, which on argument was over ruled, the agreement being in part carried into execution. \textit{Stron. 783. \textit{Mich. 1} \textit{Str. 2.}} \\
By \textit{Haii Ch.} Justice, if \textit{A.} promise \textit{B.} being a for- 
getfully at \textit{D.} curse \textit{D.} of a wound, he will be his paid; this is only a promise to pay if \textit{D.} does not, and therefore it ought to be in writing by the statute of frauds. But if \textit{A.} promise in such case, that he will be \textit{B.}'s paymaster, whatever he shall determine; it is immediately the debt of \textit{A.} and he is liable without writing. \textit{Lord Raym. 266.} \\
Affirmation of a tradesman's goods as a security for money borrowed to buy those goods, where it shall be valid, though the goods remain in the tradesman's possession, \textit{Lord Raym. 725.} \\
In consideration that the plaintiff would let his horfe to \textit{J. S.} &c. is within the statute; otherwise if it had been in consideration that he would let \textit{J. S.} ride the horfe. \textit{Lord Raym. 1085.} \\
He payed to the care of the plaintiff, he will forbear to for a debtor, is within the statute. \textit{Lord Raym. 1087. \textit{Stron. 873.}} \\
5. in what cafe the court is cognizant; and in what cafe 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. \textit{2 Fern. 264. 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 creditors, being introductory of new laws, but it is now set-tled, that such relief may be proper in equity, and that directing an affale to be tried in law is only statutory in the court. \textit{Prevcd. Chand. 14. 2 Fern. 264. 476.} \\
\textit{A.} recovers a judgment against the defendant's father, and the plaintiff (the thief of the bailiff) levied 4l. of goods in possession of the defendant's father; the defendant brought a suit against the plaintiff, pretending the goods to be his, because the landlord had foed them for rent, and sold them to him; but on evidence the sale was proved fraudulent, and that the father was in plififion all along, and paid taxes for the farm and goods, \&c. and therefore the judge gave direction to the jury to find for the defendant at law, but because he had not proved a copy of the judgment, as it was held ought, let \textit{Vol. II. \textit{N}o. 80.}
covenants or fraudulent sales, gift, grant, alienation, bargain, covenancy, bonds, lutes, judgments, executions, mentioned in the statute, and being private and knowing of the same, or any of them, shall writing in the declaration of trust, or any part thereof, shall 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 alien or assign any the lands, tenements, goods, leases, or other things mentioned in the statute, to him or them conveyed, or any part thereof, shall maintain, justify, and defend thereof one year of the value of the said lands, tenements and hereditaments, lands, rents, common, 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 covenants or frauds, sale or conveyance, or any one moiety thereof, to be the Queen's Majesty, her heirs and successors, and the other moiety to the party or parties by such seigneur and fraudulent sale, grant, gift, grant, alienation, bargain, covenancy, bonds, lutes, judgments, execution, luses, rents, common, profits, charge, 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 ill, 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 mainprice.

8. In lands and houses not yet exempted, from the above act, for justifying 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 it at L. and ruled to be no plea; for 31 Eliz., restrains 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. 

9. A testator learning on this subject, see 13 Vin., and 2 Bac. Abt. tit. Frauds; and see Agreement, Mortgage, Trust, Will.

10. As if a person having no manner of title to a house, procure an affidavit of the service of a declaration in ejection, and thereupon gets judgment; and by virtue of a writ of har, fat, puffum or any other writ, the owner out of possession of the house, and feizes and converts the goods therein to his own use, he may be punished as a felon; because he used the process of the law with a felonious purpose, in fraudem legis. 

11.Fraud, etc. A wood of ash-trees. Domest. Frechentuttum, (Frechenthius.) Among the customary services done by the tenants in Chalabout, a man belonging to the abbey of St. Edmondbury, this word signifies a young hog killed for pork, not bacon. 


Fretum. (Novi fretatata,) A ship freighted, a laden vessel. Cowell, ed. 1727.

Fretum, (Discif fretatata,) A ship freighted, a laden vessel. Cowell, ed. 1727.

Fretum, was a composition paid by a criminal, to beat and pay the natural, of which the third part was paid into the Exchequer, and that called fredum. Cowell, ed. 1727.

See Delattura.

Fretum, See Delatture.

Freet-bench, Freet-bank. (Frennum bancus, that is, fede liberalis.) Signifies that estate in copyhold lands, that the feinit, or leasor, or seigneur, of the land, or the husband of her husband, for her dower, according to the custom in the county. (Kitchen, fl. 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 death. Cowel, ed. 6. cap. 16. 1 Append. num. 3. hath these words, Confutud o'l in partibus illius, quod uxor suo mortis defuncturum habebat fraternum bancum juun de terris Sicaknumorum, & tenent nomine dixit.

Fret-bank calls it a cotton, whereby in certain cities, the wife shall have her husband's whole lands, &c. for her dower. Nat. Brev. fl. 150. See Pictolas, fl. 411. in the case of Made. Of the free bench, several matters have been observed. Ed. 1727. and West Eoburiae in the county of Eobis, a customary free-bench, doth have her free bench in all his copyhold lands, done fale & right forever; but if the commit incontinency, the better of her estate, yet if she will come into the court riding backward on a black ram, with his tail in her hand, and to the words following, the heir is bound by the custom to admit her to her free-bench:

Here I am

Riding on a black ram,

And for my christian name,

Have left my bankum bankum,

And for my tail's gone,

Have done this revolently home,

Therefore I pray you,

Mr. Steward, let me have my land again.

The like custom there is in the manor of Chalabout in the same county; in that of Ture in Devonshire, and other parts of the West. Cowell, edit. 1727.

Free-better, Signifies a person who fights without pay or reward, or for the tenure of his house.

Freehold, (Franchclusa.) In some places they claim as a free-bond, more or less ground beyond or without the fence. In Mon. Angl. 2 par. f. 241, it is said to contain two foot and a half, viz. totum beneficim vescit, Brentwood cum frank bonds, et dominum pulum & dimid., de circuitu ulius hujus, &c.

Freechapel. (Liberus 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 free for the parochioners to come or not come, and endowed with all the rights of the same, to the curfew, and theretouch called free. Others with more probability say, that those only are free chapels that are of the King's foundation, and by him exempted from the jurisdiction of the ordinary, but the King may license a subject to found such a chapel, and by his charter exempt it from the diocesan's jurisdiction. That it is called free in respect of its exemption from the diocesan's jurisdiction, appears by the Regifter of Writt, f. 40, 41. Thefe chapels were all given to the King, with chantries, 1 Ed. 6. 14. Free chapel of St. Martin le Grand, 3 Ed. 4. cap. 4. and 4 Ed. 4. cap. 12. Cowell, edit. 1727.

Freehold. See Delaturn.

Freehold. Frankenmentem, (Liberum tenementum.) Is that land or tenement which a man holdeth in fee, feetal, or at the lease for term of years. Bradton, lib. 2. cap. 9. In the Terms of Laus 's fl. 8, That freehold is of two sorts, freehold in deed and freehold in law. Freehold in deed is the real possession of land or tenements in fee, feetal, or for life. Freehold in law is the right that a man hath to such land or tenements before his entry or exit. It hath likewise been extended to those offices which a man holdeth either in fee, or for term of life. British defines it to this effect, frank tenement is a possession of land, or houses lying out of the soil, which a tenant holdeth in fee to him and his heirs, or at the least for term of his life, the soil be charged with free or other servages, cap. 32. Freehold is sometimes taken in opposition to villegage. Bradton, lib. 4. 37. 38. London in his explication of Saxons, says, with the Scripture, in the Saxon times, there was called either the land, that is, held by book or writing, or if land, that is, holden without writing. The former he reports was held with far better condition, and by the better fort of tenants, as noblemen and gentle- men, being free, as now we call freehold. The latter was commonly in the pallas of clowns, being that we now call ad voluntatem donati, at the will of the lord. The Regifter Judicialis, fl. 68, and in divers other places faith, that he who holds lands upon an execution
The text is too corrupted and unclear to provide a meaningful representation.
ancient, to whom he is heir, 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 11th Missar. and Old Nat. Bract. fol. 4.

Froth fuit. (Recent infect) Is such a present and curable infection, as never to depart from the time of the offence committed or discovered, until he be apprehended. And theeffect of this in the perfect of a felon is, that the party purrying shall have his goods again, whereas otherwise they are the King's. Of this see Stanoff. Pl. Cor. lib. 3, cap. 10, & 12. where he treats large upon this head, to be accounted froth, and what not. And the same author in his first book, cap. 27, 1. That froth fuit may continue for seven years. See Calke's Rep. lib. 3. Ridgedyv's cafe. Froth fuit femeth not to be either within the view or without; for Magna chart, That upon froth fuit within the view, tryers might be attached by the officers purrying them, though without the limits and bounds of the forest. Cap. 19. per teneam. Cowell. It seems to have been anciently holden, that to make a froth fuit, the party ought to have raised a hue and cry with all convenient speed, and also to have taken the offence at this day; it seems to be required, that if the party hath been guilty of no gross neglect, but hath used all reasonable care and diligence in inquiring after, purrying, and apprehending the felon, he ought to be allowed to have made sufficient froth fuit, whether any lost goods be proved or not, and whether such offender were taken by means of such purrying, or without any assistance from it. 2 Hauel. P. C. 169. See Leic. and Cry.

Fruiti Britannicum, The freights between Dover and Calais.

Fruiti Britannicum, The freights between Dover and Calais.


Frat or Frater, (Lat. frater, Fr. frere) An order of religious persons, of which, there are reckoned the principal branches, (Stat. 4 Hen. 4, cap. 17.) one Mlnn., Grey friars, or Franciscans, Augustinians, Dominicans, or Black friars, and White friars, or Carmelites, from the which refed. See Zachins de Repub. Eccles. pag. 380. and Lyndard. tit. de Reg. Domin. Augusti. i. 1. verb. Sanci Auguflini.

Fratres or Students or Oblates (Student or Oblates) Is an order of Franciscans, which are Minor, as well the Obolates as the Conventualls and Capuchins. Zach. de Repub. Eccles. tradit. de Regular. cap. 12. Thence we find mentioned anno 25 Hn. 8, cap. 12. They are called Obelates because they are not combined together in any cloister, convent or corporation, as the Conventualls are; but only tie themselves to observe the rites of their Oder more strictly than the Conventualls do; and upon a fingularity of real separate themselves from them, living in certain places, and companies of their own chuch: And of these you may read Hophimi de Orig. & Prorff. Missar. Mitfcon. fol. 85. cap. 28.

Frighburgh or Frithburgh, (from the Saxon Frith, i.e. pox, and large, i.e. fulghor) Is the same with frandle, the one being in the Saxons time, the other since the Conquest; wherefore, for the understanding it, read Fritched, and the laws of King Edward set out by Lumbard in 1432. In these words, he further states that, sundry & sumoni securitas, per quos sumoni estem fradis securitas, victor, ut atqueque sit habens, et socii habent in societate, quod anglor vicus (trebaragh) habent iure. Avereriet dicit eodem (tineannunatu) quod statu hic situ ut socii habet in societate, per quos sumoni estern fradis securitas. Every man in this Kingdom was affected to himself to have a congery, and in each congy was in the hands of ten families, who were pledged or bound for each other to keep the peace and obvise all, and if any offence was done by one, the other nine were to answer it; that is, if the criminal died from justice, they had thirty days allowed to apprehend him; if he was not taken in that time, then he was the fradis, (that is, the principal pledge of the ten, should take two of his own number, and the chief pledges of three neighbouring fradis, with two other out of each of these fradis, in all 12 men, whereas 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 fradis, of the forfeiture and punishment, and yet to be of the franchise, and if they should do, then the principal pledge, with the other eight to whom he did belong, was to make full satisfaction; but afterwards it became difficult to get the three neighbouring fradis to join with the other, and therefore those other nine made earth that they were not guilty, and that they would be secured, and he should not be charged; he therefore, as long as it continued, met Bracten mentions Fraghburgh, lib. 3. tradit. 2. cap. 10, in the words Archiepsiqui, episcep. ecmies & barones & ames qui habent fac. & fac. tel. & tel. & hujusmodi liberti, miles fac. & proprios servientes, armigeres, &c. defheripts, & panirem, camerarius, capites, &c. habent fac. frithburghi bohste deferen. Ism. & fals. jitt, eam enim que alius fradis vires gentes quem si forte secratus, ibi dimini jitt medio beato star ad re.tum, & freg. & non habentur, faciunt pro eis sedit. Societas. Et si Joerbernand et de enmilis alias qui de aliciensi monopagio. Where we learn the reason, why great men were not combined in any ordinary deten; but that their lands were the common patrimony, and for their mental favours, not less than the ten were one for another in ordinary deten. See Skene, verbo Freibergh. Ficta setiis erat, and in the first man, or at least for one of the deten. lib. 1. cap. 66. Auct. Mallode, part. jure, usual. in Hen. 2. fol. 145. But Specumere, verbo Friberg. Where between Frig and Frithough, the frit signifies liber folia, or foliffijus; the other pais secratus, Frithford and Frithhough, (from the Saxon frith, pox. fac. febris. cathedra. frath, locus) A feast, cliar or place of peace. In the charter of immunities granted to the church of St. Peter in York, by Hen. 6, confirmed, An. 5 H. 7, thus. — Quod si aliquis, vsejus spiritus agitatus, diabolicus au quoque impuro posse purgatum, in cathedra lapides juxta altare, quod Anglius vocat fridflong, i.e. e. cathedra quatuordecim tab. pacis i.e. bau promtus sagittis securius, habens multa jittum, jittum ab eis, multa pacis numeris claudaturas, fed apud Anglos Boileuse, loci, in fine, eximia, vocatol. Of these there were many others in England, but, the most famous at Beverley, which had this inscription, Hic fideles lapida fradis diecretor, i.e. pax cathedra, ad quem revocat purgandum, deus. The frit signifies also a palace, which is usually a privileged place. Frisowde anf Fridwit. Tis a millet paid by him who delivered the army: From the Saxon frith, expeditis, et vice, millet.

Frideles man. See Frideles man.

Fridius, From the Saxon, frith, libri, and Jifin, dimittere. Cowell, edit. 1727.

Fridius, A freeman: From the Sax. freed, liber, and Jifin, pugnari. Cowell, edit. 1727.


Friggit. I deduced from the French fripper, inter- pretation, to make roebuck and cheperch old appellation: see again. It is used for a kind of brook, in flat. 1. acc. cap. 11.


Firth. A word, from the Sax. Firth, fax. For the Etymology, see Etymologies. See also make them words. Cowell, edit. 1777. See Frith.

Friulich, Patis vocat; the break of the peace. Leg. Etheldred. cap. 6. See Frith.

Friulichin. Inter leges procurationem maximalam. cap. 1. specificatione licentia coniugii dicta. habenda, nisi in ter. to alius aequo aequora, uterisque, fraterque,
F R

Fitting of wheels, is perhaps what we now call the 
tinning of wheels, i.e. fitting and fastening the 
fellows (or pieces of wood that conjointly make the circle) 
upon the fellet, which on the top are let into a small 
fellet, and at the bottom into the hub—In Italian fruifum quod quisque 

Fugae. (Derived from Fenge) In the reign of 
Elder the Third, the Black Prince of Valois having 
acquainted granted him, he sent him some seven 
frages or finge upon the objects of that Dukedom, viz. twelve 
peace for every five, called berulums, Rat. Fact. 25 
Ed. 3. To the probable the building took its original 
from hence.

Fulg. In B. 43 Eliz. cap. 14. All faggots to be 
fold shall contain in compau, fefles the kind of 
the bond, twenty-four inches of affe; and every faggot 
within the bond shall contain three feet of 
affe, except only one faggot to be but one foot long, 
to ftop or hinder the burning.

Fut. Stat. 9. Ann. cap. 15. All billets (except those made 
or beeche, by 10 Ann. cap. 6.) that he espoused in public 
places, where they are usually bought or fold, shall 
be alfield and cut, or marked in manner following: 
that is to say, all billets of what fcaicing or denominations 
soever, shall be marked in length three feet and four 
inch, and be the following dimensions either.

Sect. 2. And if they shall not be thus alfield and 
marked, then on information to a justice of peace, mayor 
or other head offe, he shall call before him good 
and lawful men of the town, and shall swear them truly, 
to inquire whether the fame be of good and 
sufficient affe; and if they shall pretend that any of 
it is not sufficient, the same being defective, shall be for-
forefed, and delivered to the overers to be by them 
distributed to the poor.

round. How to cut and marked.

A Sing. 7 2 0 0 0
A Call 10 1 2 1 2 1
A Troi 15 0 15 1 14 3
A Cal. 15 17 0 0 0
A Cal. 18 21 0 0 0
A Cal. 22 1 24 2 27
A Cal. 23 3 27 2 27
A Cal. 26 30 0 0 0
A Cal. 28 0 32 2 23
A Cal. 30 3 34 3 24
A Cal. 30 3 34 3 24
A Cal. 30 3 34 3 24
A Cal. 33 3 34 3 24
A Cal. 41 3 43 3 0 0
A Cal. 43 0 0 0 0 0
A Cal. 45 0 0 0 0 0
A Cal. 46 0 0 0 0 0
A Cal. 47 2 0 0 0 0

Futur, (Fuga, from the French fage, forger.) Tho' it be a verb, yet it is used substantively, and is two-fold; futur in fact (in faite) when a man doth apparently and corporally fly, and futur in leg (in lege) when being called in the country he compact not, until he be outlawed; for this is flight in interpretation of Law. Stow. Pl. Cor. lib. 3. cap. 22.

Fuga retellium. A drove of cattle. See Stare- 
hand. Fugatia, Significas a change, and is all one with chofia.
Chorar Abuttæ Imprimatur Illiniæ de Glæna.—Præcipu. H 2

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A merchant of London departs the realm, to the intent to live freely from the penalty of the law, and out of his due obedience to the Queen, and for no me-
chandise, was arrested by the justice except two, to be no contempt to the Queen; for merchants were ex-
cepted out of the statute of 6 Ric. 2. cap. 2, and by the common law merchants might pass the fence without
licences, but it were not to merchants.

Fugitivus 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 Cot. 2. c. 16. See C.C. 462.

Fullgeta. (Fides.) Ferv. Du Fresne.

Fullham Bridge. See bridge.

Fuller’s earth, Filling and securing clay, Pe-
ナルés on exporting them, 12 Car. 2. c. 32. 13 & 14 
Car. 2. g. 9 & 10. IVI. c. 40. 46 Car. 1. c. 21. f. 32.

Fullum aquae, A stream of water, a stream, as
such comes from a mill. Cowell, edit. 1727.

Fumage, (Fumagum.) Dunm, or manuring with
dung, Et fait quattuor de fumagio, & maremio cætando, &c. 
Charter Rici. 2. Priorat. de Hertford, pat. Ed. 4. 
part 3. m. 15. But indeed fumagum was properly
found, for a certain man, who carried a meast from every
house that had a chimney or fire place, Cowell, ed. 1727.

Fumaders or Fumadores, Are pickards garbaged,
false, harbored in the smoke, and prifoned, so called
in Italy and Spain, whither they are carried in great numbers,
and there mentioned in 13 & 14 Car. c. 2. 18.

Fumator. The founder of a church, college, hospita-
l, 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 funder, but continued to the
funder and kinrugs, who held the fee of the fire
the endowments of such benefactions, and by fume
was the patronage or advowson of them, and after
the extinction or long intermission of the title, a person
could prove his’felf from the first founder, was
affirmed by the religious to the name and honour of their
funder. Cowell, edit. 1727. See Annuity’s Ordinary in

Funding, Used for pioneers, in Pat. 10 Ed. 2. 
1. 1. 2.

Funds. The general fund established for making
good defciences, 1 Ann. 1. c. 13. 3 Gren. 1. cap. 7.
Paid for paying off Exchequer Bills, 7 Ann. 1. c. 7. 
Fett. 32.

Surplus of annuity funds may be charged with defciencies
of another year, 8 Ann. 1. c. 13. fett. 29.

The aggregate fund, 1 Gren. 1. c. 12. fett. 8. 15. 
Gren. 1. c. 8. male perpenet, 5 Gren. 1. c. 3. fett. 22.

The sinking fund, 5 Gren. 1. c. 3. fett. 66.

Part of the Stock of the three companies to be re-
duced by the sinking fund, 7 Gren. 1. c. 5. fett. 39.

Appropriation of the sinking fund, 8 Gren. 1. c. 20. 
Fett. 29.

The forfiples of the sinking fund appropriated, 9 Gren. 
1. c. 5. fett. 34.

Addition to the aggregate fund, 1 Gren. 2. c. 2. 8. 
Fett. 17.

Supply to the aggregate fund, 20 Gren. 2. c. 3. fett. 58.

For relief of the legislature, S. 15. int. 8, out of
his legacy to the finking fund, 10 Gren. 2. c. 34.

The finking fund charged with annuities in discharge
of navy bills, &c. 22 Gren. 2. c. 73.

Annuities granted out of the finking fund, 13 Gren. 2. 
c. 16.

His Majesty may borrow money on the credit of the
and-tax, 4 Gren. 3. c. 1. fett. 150.

Addition to the grant tax, 4 Gren. 3. c. 2. fett. 25.

Surplus of duties on licences and new fump duties ap-
propriated, 30 Gren. 2. c. 19. fett. 20.

Certain duties carried on the finking fund, 32 Gren. 2. 
c. 27. fett. 4.

Arms granted on the finking fund, and certain
annuities consolidated, 4 Gren. 3. c. 18.

Funding,
Funeral charges. A person died in debt, and 600l. was laid out in his funeral; decreed the same should be a debt, payable out of a trust effect, charged with payment of the debt.  

Furtat. See Furtur, furtum, a furt, or theft, i.e., the fourth part of an acre, which in Halfacre is still called a furtingle, and in former usage to the north of the North, a furteinte or small part of corn. See Kenn's Glossary.

Furtive. A mule paid for theft. Among the Laws of King Ethelred, made 1727, § 7, it is allowed they shall be winknells, qui nequeanimus furtidum reddidit, i.e., who were never accused of theft or larceny.

Furlong. Furlongum terrae, is a quantity of ground containing in square poles forty poles, every pole fixteen feet, by an half in length, and which therefore in vulgar parlance in the North, a furteinte or small part of corn is two gavens or gallons, i.e., the fourth part of a bushel. See Kenn's Glossary.

Furtum. A mule kept an owner.


Furtura. Furtura from the French furturer, i. e., peculiaris to line with fins) is the coat or covering of a beast. The statue 24 Hen. 8, cap. 13, mentions divers, as fable, which is a rich fur, of colour between black and brown, being the skin of a beast called a fable, of biggers like a wolf; in the fable, the skin and fable of a fable, being near the biggars of a wolf, of colour between red and brown, something mailed like a cat, and mingled with black spots; bred in Mafereu and Royalis, and is a very rich furer, Genus is the skin of a beast so called, of biggers between a cat and a wreele, mailed like a cat, and of the nature of a cat; bred in Spain, whereof there are two kinds, black and grey, and the black the more precious furer, having black spots upon it hardly to be seen. Furtures are of fashion like the fable, bred in France for the most part; the top of the furer is like black, and the eight in the back half in length, and which is called a yellow, the skin some courser; it liveth in all countries that be not too cold, as England, Ireland, &c. the best in Ireland. Miniver is nothing but the bellies of squirrel rels of same furer, as others, it is a little vermin like unto furtile, and of the name as a weeler, milk white, and brought in Furturum. In Latin, the title of a person of quality, and in the modern times, a plain or feudal nobleman. Sir Richard de Cowell—Placet, Term. Mich. and 2 Iul. rot. 7.
Gallic (Gabella, gallicium: Saxon gafol, alias gæol, i.e. cattle). Hath the same significance among the ancients, that gabelle hath in France: For Mr. Camden, in his Brit. pag. 213. Speaking of Wellingford, hath these words, Continetit 276 bagas, i. domis, reddentes xixi libras de gabo. And pag. 228. of Oxford there. Hac ura reddolat pro selansia & gabo, & alii confinuantur, pro annis, qve quosque gabelas hominum, tributum, similis erat Aeginae decimas libras. Gabella, as Columna defines it De Conf. Burgund. pag. 119. of vectigal solutio pro bonis mobilibus, id eft, pro ilia quotubant, disfigulando it from tributum, quia tributum erat propri proprietate, qui solutio vel principii solutio pro rebus inimmobilibus. The Lord Chancellor in his Commit do divinat, libit thes, usu. 2. c. 2. fol. 213. Here note, for the better understanding of ancient records, statutes, charters, &c. that gael, or gavel, gabol, gablinum, gabellum, gabellatum, & gabellaturn, do signify a rent, custom, duty, or service, yielded or done to the King, or any other lord. But that gabel did as well extend to money, as to other things in kind, is very plain by that demand, Dismodem, Boc, in Windes in Hiberia, where 'tis said, Rex Williamus tertius Windores in Dominice, Rex Edw. tennit ibi xx. bipes, &c. Et adules fact in vix villa C. Hage V. minis; ex hiis sunt xvi. quies de gabo & de alii ex earum som. fidel. And loth. In the same book in Simulat., it is thus expressed in the title of Tereus Ego, (which observe) Rex tentat ecle (I suppose it is that Chater, so famous for its ecle) Rex Edw. tertii, quamquam gellat, sed fact per quid belas fact ibis, in Dominis, et xx. scors cum xxvii. sc. a. vi. gablatores redd. xvi. xvi. single gablettes did pay seventeen shilling, and from their paying of rent were termed gablators. It seems probable, that this gabol is to be distinguished from a rent or payment made upon contract and bargain, and hath relation to such a one as was imputed by the power and will of the Lord. And these different forms of a rent or payment mentioned in Danmarks Book under several expressions, according to the nature of them, where sometimes it is written, that one redit to such a one or another, without any addition: And this, I believe, was rent upon agreement and contract, and then the persons so engaged in the third redit de gabo, to much. When gabel is mentioned without any addition, then it usually signifies the tax on sels, proper excisions, but afterwards it was applied to all other taxes, as galle de vint, &c. Cowell, edit. 1727.

Gallician (those that paid gable, rent or tribute. Dan. Diflor.)

Gallend, (Gabbam, Gabalea, Galaba) The head, or front part of a house, or housetop. The gable-head, the gable-end, &c. Quadrant partium terrae—extra gabbam malandini otii folis in latitudine, Paroch. Antiquit. pag. 201. See domus ficta in tertier gabbam tenentes mihi, & gabbam tenentes Laurentii. Kepharne. Ibid. pag. 286. See Kenme's Glossary. See R. Echtrich, &c. for the word. &c. In etj brief nova judgment ducet eae Gabellam styg force cona. Ptdh. fol. 332. a. that is, till the day of aem; never. Cowell, edit. 1727.

Gallus bencruxius, Rent paid in money. Selden of Tribus, pag. 321. Gallaghaba, In a Saxon word, signifying the payment, or surrendering of tribute or常务副. Also it sometimes denotes uffury. Cowell, edit. 1727.

Gallitain or Gallitain, Terra curialis, liable to tribute or tax. The Saxon Dictionary calls it rend. land. See C, Gallat.

Gallivet, Signifies a pawn or pledge, and is derived from the French gage, that is, pignor dare, Glanv. lib. 10. c. 6. Part, Quanduo ret mobiles prunam in venire, quanduo ret immobiles; and a little after that, thus, inauditor ret quanduo ad terminum, quanduo fine termini; item quanduo inauditor ret aliquo modo. And though the word gege be retained as it is a substantive, yet as it is a verb, ute hath turned the g. into a w. so that it is often written wage, as to wage delincence, that is, to give security that a thing shall be delivered: For if he who had claimed, being freed, hath not delivered the estate that were disdained, then he shall not only avow the default, but gage delincence, that is, put in sureties that he will deliver the gable disdained, F. N. B. fol. 74, 67, yet in some cases he shall not be tied to his security, as if the gable died in the pound. Kitchen, lib. 145. or if he Celebration in the noble field. This delinca, To wage law, see Lat.; and also see Malignage.

Galler delinences, See Gage.

Gager delinquences. See Gage.

Gager deli, See Wage, and Wager of Law.

Gagers, See Gauger.

Galliance (Lat. Vignuogium, i.e. ilia plagiis, vel plagiis, &c. French, gage, i.e. the gain or profit of tilled or planted ground). Signifies the draught-oxen, horses, wain, plough, and furniture, for carrying on the work of tillage by the better sort of farmers and villages; and sometimes the land itself, or the profit raised by cultivating it. Brudin, lib. 1. c. 6. Speaking of his own land, he says, "in hoc post, he had not any one, or the greatest number of the old houses, minias, et sic es destruent, que galbam non pottius eis in saepe vino poumo. And again, lib. 3. trad. 2. c. 1. Miles et libera non agricxerbibit nisi saepe scando delictum, sciendum quod dilectum quisque magnum vel parum et solis ementem et quod: Messor non nisi meritorius suis, et villanus non nisi foliis in saepe vino seno. For anciently, as it appears both by Magna Charta, cap. 14. and other books, the villain, when a monkey, had his wainage 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 disdainable. This in Hicton, 1. cap. 6. Anno 3 ed. 1. is called gynacce, and again, cap. 17. and in Magna Charta, cap. 14. it is called gynacce. In the Old Nat. Brev. f. 117. it is termed gainer. In these words, the wirte of Ael was prasent, &c. quad reddat unus bantum terre & unus bantam non; &c. not etiam fecerit, &c. as certain writers do. This was the gynacce, or the thing that lieth in gainers. This word was used only concerning arable land, because they that had it in occupation, had nothing of it, but the profit and fruit raised by their own pains towards their habitation, nor any other title, but what was as the word 1m in the same words, fol. 12. is used for a foeman, that hath such land in his occupation. In the 32d chapter of the Grand Coronet of Naundy, gainers are agric.
G A M

laminating challets, and for the violation thereof may bring an action of trespass. 2 Boc. Abr. 617.

Hens and chickens are tame; fo (cuckoos, like other domestick fowl, are tame by nature. Off. Ed. 8, 1 Rel. Abr. 5. 18 Hen. 8. 2. So several forts of dogs are tame, as the maltrie, hound (which comprehends greyhounds, &c.) spaniel and tombliner; and for these a person may sue for an action of trespass for allowing that they were there. Cre. Ediz. 122. 1 Sound. 84. So a perfon may justify in afflalt and battery in defence of his dog that is tame. Red. Edit. 611. So a repfkin heth of a terrene. Cre. Ediz. 126.

He who takes pernicious plants, or any other filces, are unfodled thofe which by reafon of their ftriftness or fiercenes make the dominion of man, and, in thefe no person can have a property, unless they be tamed or reigned by him; and as property is the power that a man hath over any other thing for his own use, and the liberty that he has to apply it to the fubftrances of his being, when that power ceafe, his property is null; and by confequence an animal of this kind, which after any fcarce escape into the wild common of nature, and afferts its own liberty by its ftriftness, is no more mine than any creature in a fodor, because I have it no longer in my power or difpower. 3 Ca. 16. 3 Lev. 237.

Hence it appears, that by the Common law every man had an equal right to fuch creatures, as were not naturall under the power of man, and that the mere capture or fteal created a property in them, except in the following cases. Cre. Ediz. 547. 1. By immediate manufcript, on the prefumptions and killing them; for in these cafes they belong to fuch perfon in the fame manner as any other chattels, and can't be violated from him, fince the fahle fteal and capture was fufficient to veil the property of them in him. 7 Ca. 10. 2. By taking and taking, and then alfo they belong to the owner, as do all the other tame animals fo long as they continue in this condition, that is, as long as they can be confoled to have the mind of returning to their miflfrs; for while they appear to be in this flate, they are plainly the owner's, and ought not to be violated; but when they forake the houses and habitations of man, and brake themselves to the woods, they are then the property of any man. 7 Ca. 16. 6. Del. Pleas. 314.

3. Another way of gaining property in them is by infaluation, and then the beafts muft be underftood to be mine, as the prefumption of afletion of mine. They are no more taken and carried off than any other thing of the land; and therefore if I incleave deer in a park or paffade, conies in a field or warren, they become my own, that no man ought to kill or take them away; now fince in this cafe, 'tis the infaluation only that retains them, (for taken and carried off by another is in their natural liberty,) therefore the party is had to have a right as he hath to any other profits there included, and a difficult and independent right in every animal. March 49.

4. The King, as an acknowledgment of his dominion over the faws and great rivers, by his prerogative has a property in fome animals under the dominion of royal creatures, as flurgeon, whales and fawms, all which are the natives of faws and rivers. 7 Ca. 16.

On these reafons and difficulties of the Common law, we may now fee how the law fands with regard to the hunting of game, within the ferveral fitu- tutes made for the prefervation thereof. First it is clear, that if a man pursue deer, hares or conies out of his land, 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 including them into my land. 35 Ca. 154. But it is laid, if a man flies his hawk at a pheasant in another man's ground, and the hawk pursues the pheasant into another man's warren, the owner of the hawk can't juftifie the entering the warren and taking the pheasant. 38 Ed. 3. 10. b. 12 Hen. 6. 1. 3 Rel. Abr. 507. Pap. 105.

If a man hunts conies, and they come into my ground, I may force them, because they are indeed my property by the infaluation; but if he hunts them out of my ground, they are in the condition of natural liberty, and then I can't

I laminate challets, and for the violation thereof may bring an action of trespass. 2 Boc. Abr. 617.

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If a man hunts conies, and they come into my ground, I may force them, because they are indeed my property by the infaluation; but if he hunts them out of my ground, they are in the condition of natural liberty, and then I can't
take them away from the hatter, for then the property is in no man; but damages I may have against the hatter.

5 Mod. 375.

But where a man hunts coynes in my warren, or deet in my park, and the warrenie pursue them, he may re
take them; for the park or warren is an enlibishment by the publick to prefer and protec the game; for all the
man's repleic, in which no man hath a civil right, is
under the regulation of the publick; now in parks and
warrens, officers are esliblished 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, the damage is in the party, and in the officers;
for, as long as he that is thus sought doth pursue it,
it is not in its natural liberty, but is still belonging to
the unoccupied warrens.
22 Hen. 8. 9. 2 Bac. Abr. 613. 614.

Alfo the Common law warrants the hunting of rave
nous beasts of prey on another's ground, such as foxes,
wolves, badgers, &c., to that the party in pursuicing them
through the grounds of another is subject to no action
whatsoever; but it hath been refolved, that the hunting
and killing such noxious animals must be done in the or
dinary and usual manner; and that therefore the digg
ing for a badger is unlawful, and the party subject to an
damages for paffing Lea, 472.

A warrenie or keeper of a park may justify the kil
ning of dogs and cats, as well as other vermin, which
he finds disturbing the game in those places. Cro. Jac.
44. 3 Lea. 28. cont. 1 Rot. Abr. 357.

A man can't have an action of trefpafes on the cafe,
for another man, who enters breaking into his ground,
because, they are no longer the others than they are inclofed;
so that no violation aifes to the property of one
man by the beafts of another, but the coines being in
their natural liberty may be lawfully killed by the owner
of the foil. 5 Co. 104. Cro. Elia. 547. Mor. 420. 421.
2 Rot. Abr. 490. 491. 3 Lea. 28. cont. 1 Rot. Abr. 357.

An action of trefpafes may be brought for taking a
man's deer in a park or chafe, or of coines in his war
ren, which the law takes notice that they are inclofed,
because there are the proper inclofures for that purpo
e, and confemionally those beafts are not in their na
tural liberty, and therefore the property is in the plaintif.
but 7 Co. 17. cont. and see Cro. Car. 553.

In an action of trefpafes, Quare clausum frigint, & da
mas ipse in plaintiff copi et aforruitat, they shall be
intended to be included after a veridic; because where a
veridic is had they are the plaintiff; and because that
veridic must be intended to be true; therefore the de
deer must be intended to be inclufed, as to be under
the plaintiff's power; otherwise he could not have pro
erty according to the veridic. Salk. 356. 5 Mod. 375.

But if in trefpafes, Quare duos damos ipfum le plaintiff
in quodam clausum &2 plaintiff, suos le park, copi e a
forruitat, the defendant demns generally; this hath been
ruled to be ill; Because the court will not intent them
to be tamed or inclofed; and in plafts, 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
park. 3 Lea. 377.

Any person, upon his own frank tenement, may erect
a dove-houfe; nor can he for fuch building be indicted in
the leet; this was a matter often controverted, because the
pigeons and doves were to be accounted as tame ani
mals, and therefore it was held, that if any person
whoever did erect fuch houfes, were answerable for the
damages; and because they were not liable to every
man's action, to avoid multiplicity of suits, it was for
merly held, that they were indifpensible in the leet; but
the contrary opinion prevailed, because it was allowed the
lord, as owner of the manor, to erect or put up any
perfon to erect a dove-houfe; but no perfon could raife him
self, or authorize another to create a nuisance; be
fide, theree animals are rather to be accounted fere na
tures; and by consequence, the only remedy any perfon
had for the damage fullained by the birds feeding on his
ground, was to kill them, and take them to himself,
G A M

G A M

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 gams, bows, grey-
hounds, setting-dogs, ferrets, coeney-dogs, lurchers,
hayes, nett, lowbells, hare-pipe, gins, snares, or other
engines aforesaid, but shall be, and are hereby prohibited
for that purpose.

Stat. 9 Ann. cap. 25. sect. 1. No Lord or Lady of a
manor shall make above one game-keeper within one
manor, with power to kill game; and the name of such
person shall be entered with the clerk of the peace; such
entry to be made and written without fee, and a statute
care is taken that it 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, pleasant, partridge, moor, heath-game
or grouse, or if any game-keeper, or other person not qual-
ified in his own right to kill game, shall fail or expose
to sale, any hare, &c. the offender shall incur such pe-
nalities as are inflicted by the 5 Ann. cap. 14. upon high-
ways, carriages, inn-keepers or victuallers, for buying
or selling of game; such forfeitures to be recovered as re-
ferred to the said act.

Stat. 1 Ann. cap. 11. sect. 1. No Lord or Lady of a
manor shall appoint any person to be a game-keeper
with power to kill game, unless such person be qualified,
or be truly a servant to the said Lord or Lady, or im-
mediately employed to kill the game for the sole use of
such Lord or Lady; and no Lord, &c. shall authorize
any person, or set them to kill game for the sole use of
setting-dogs, hays, lurchers, guns, tunnels, or any other
equipment to kill the game; and any person, not being qual-
ified, or not being truly a servant of any Lord, &c. or
not immediately employed to take or kill the game for
the sole use of such Lord, &c. shall take or kill any game,
or use any greyhounds, &c. being convicted thereof, shall,
for every offence, incur such forfeitures, &c. as are ap-

2. Statutes concerning the game in general, with cases
determined upon them.

Stat. 4 & 5 Will. & M. c. 23. sect. 3. Every con-
stable, headborough and tithingman, being authorized by
warrant of one justice of peace, shall enter into and fea-
tch, upon the act for punishment of deer-fleekers, 3
& 4 W. & M. cap. 10. the houses of such evil disposed
persons not qualified; and in case any hare, partridge, pietacant,
pigeon, filth, foul or other game, shall be found, the of-
fender shall be carried before some justice of peace; and if
such person does not give a good account how he came by
such filth, or if he be not convicted in the act, or if the
justice, prodare the party of whom be sought the
same, or some other credible person to depose upon oath
such filth thereof, he shall be convicted by the justice of
such offence, and shall forfeit for every hare, partridge,
filth or other game, any sum not under 5s. and not ex-
ceeding 10s., to be determined 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 the justices and sale of goods, by warrant of
the justice; and for want of such the offender shall be
committed to the house of correction, for any time not
exceeding one month, and not less than ten days, there
to be whipt, and kept to hard labour; and in case any
person not qualified shall keep or use any bows, grey-
hounds, setting-dogs, ferrets, coeney-dogs, hayes, lurch-
ers, nets, tunnels lowbells, hare-pipe, snares, or other
instruments for hunting of fowl, or any other engines a-
foresaid, and shall be thereof convicted as aforesaid, he shall
be subject to the same penalties as are to be inflicted upon
the persons who shall be found to have any hare, par-
tridge, filth, foul or other game, as aforesaid; and if any
person produced shall not before the justice give evidence
of his title, or of the fair hunt, or of his right to keep such
game, in the same manner as the person first charged, and so from
person to person until the first offender be discovered.

Sec. 4. All lords of manors, or any persons authorized
by them as gamekeepers, may within their royalties re-
fuse such offender in the night-time, in the same manner,
and be equally indemnified, as if such fact had been
committed within any ancient chase, park or warren.

Sec. 7. No certiorari shall be allowed, to remove any
conviction in the act, nor any judgment of any
unlawfully procured, unless the party, against whom such conviction shall be
made, shall before the allowance of such certiorari be
come bound to the person prosecuting in 50l. with such
furnaces as the justices of peace before whom such offender
shall be tried shall think fit, with condition to pay unto
the prosecutor (within one month) the costs thereupon con-
firm or proceed (granted) their costs, to be afer-
tained upon their oaths; and in default thereof it shall
be lawful to proceed to the execution of such conviction,
as if no certiorari had been awarded.

Sec. 8. Where any offender shall be punished by force
of this act, he shall not incur the penalty of any other
law for the same offence.

Sec. 9. If any action shall be brought for any thing
done in pursuance of this act, it shall be lawful for the
person so to plead the general issue; and if the ver-
dict shall be for the defendant, &c. such defendant shall
have treble costs.

Sec. 10. If any inferior trademans, apprentice or other
kill persons, shall hunt, hawk, fowl or foul (unless in
company with the master of such apprentice, duly
qualified) such person shall be subject to the penalties of
this act, and shall be liable to the forfeitures and mis-
tufts in coming on any person's land, and if found guilty,
the plaintiff shall recover full costs.

Sec. 3. In case any person not qualified, The defen-
dant was convicted upon the statute 4 & 5 W. & M. c.
23. for allowing game, not being a person duly
qualified, Mr. Wills, the defendant, took all the except-
tions to the conviction. 1. That the information was
not laid forth in the conviction, was insufficient to war-
rant the conviction; for the information only recited that
he was an inferior tradesman, but did not shew that he
had waited his sufficiency, or that he was a kill person,
which are the words of the statute, and therefore it
did not appear by this conviction, that the defendant
was such a person as was intended by the statute, for he
might be an inferior tradesman, and yet have a sufficient
effe to qualify him to hunt, &c. 2. That it was not
any where set forth in the conviction, that the defendant
did unlawfully kill and take, and therefore appears in
this conviction, the defendant must have bought the
hare, and have hunted and killed it in his own yard,
which would have been lawful. 3. That the conviction
set forth, that information was given to such an one
as such a person, and that he did not lay sufficient
and he might be a lawful person, and not at all the in-
formation. But the court over-ruled all the exceptions;
and to the first they said, that the statute was in the dis-
putative, viz. inferior tradesman or kill person; and there-
fore saying that the defendant was either suffi-
cient. To the second, the court said, that the statute
forbade such persons as the defendant to hunt at all, and
made it criminal for such persons to hunt generally. And
in this statute there is no distinction betwixt lawful and
unlawful hunting, as there is in the statute against deer-
feelers; and they agreed, that in a conviction for deer-
feeling, it must be set forth, that the defendant did un-
lawfully hunt; but in the present case it did not be-
cause there is no such distinction. To the third excep-
tion the court said, that the conviction set forth, that
information was made to such an one subject to the juric
&c. which must be intended, that he was one that at
that time, and was of the craft. And to all the excep-
tions were over-ruled, and the conviction confirmed.


Sec. 10. Inferior trademans Trafals for breaking his
dice, treading and eating his graves; and that the defen-
dant said the said dice, being an inferior trademans,
et alias ensor, &c. Upon Not guilty pleaded verdict
for the plaintiff. And Mr. Wills moved an arrest of
judgment,
judgment. 1. That it was not fatal, that the defendant was not qualified by estate to hunt, without incurring the penalty of the act; for if he be, he might hunt b. law. But to this it was replied by the court, that hunting is a trade, prohibited by act of Parliament, in all inferior trades. Then the new statute 25 & 26 H. M. c. 25. only as to this point of inferior tradesmen, repeals the statute of 22 & 23 Car. 2. &c. 9. which enacted, that the party shall recover no more costs than damages, when the jury give damages under half frillings. But no act en-
ables the party to move in another's ground; and therefore it is not material, how the person is qualified, in the case of an inferior tradesman, as to his estate. Then it was moved, that the plaintiff having concluded, contra fornam platati, this goes to the whole, and therefore it is ill; for without an offence against a person, and not against the statute. But to this His Lordship 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 fornam platati. 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 fornam platati, 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 fulfilled as to the offence at Common law. And he referred him to the case of Page and Harnswell at Allen 43. So it a man brings an action for an offence, which is not at law, but at the suit of the state, verbo stare, there the contra fornam platati shall be fulfilled. And he cited a case in 1 Vent. 103. where A. brought an action for withdrawing his wife contra fornam platati: and because there was no statute, this was null and void. But in this case, the act of 25 & 26. H. M. does not create a new penalty, but is a restitution of the Common law; and therefore the party has no need to declare contra fornam platati; and therefore it will be the better way hereafter to omit the contra fornam platati in such cases. And if the plaintiff declares that the defendant was an inferior tradesman, he shall have void for his wife contra fornam platati. And the plaintiff declares to contra fornam platati, where there was no need of it, without doubt it shall be fulfilled. And therefore judgment was given for the plaintiff, &c. &c. And in Eager term it was absolutely given for the plaintiff.

Lord Raim. 149. 3st. 392.

By the 5 Ann. cap. 14. &c. 2. it is enacted, "That if any person, or every man, carter, innkeeper, victualler, or alehouse-keeper, shall have in their or his or their family or pos-
fession, 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, or every such higler, &c. (generally, that is, every bird, or every name of game, except a bird, but by a person or persons qualified to kill or catch the game,) shall upon every such offence be carried before some justice of the peace for the county, riding, city, or town corporate, or liberties, where the said offence is committed, and if upon view, or upon the oath of one or more credible witnesses, shall be convicted of the fame, shall forfeit for every hare, pheasant, partridge, moor, heath-game or grouse, the sum of £i. 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 distraits and sale of the offender's goods, under the direction of the justice or justices of the peace, before whom such offender or offenders shall be convicted, rendering the overplus (if any be), the charge of distraint being first deducted; and for want of dis-
traits, the offender or offenders to be committed to the house of correction for the first offence for the space of three months, 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 certiorari shall be allowed to remove any conviction made, or other proceedings of or concerning this in any other court, the courts at Westminster, upon any pre-

or persons profecuting the fame, in the sum of fifty pounds, with such sufficient securities, as the justice or justices of the peace, before whom such offender shall be convicted, shall think fit, with condition to pay unto the said justice or justices of the peace, within four days after the conviction or proceedings 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 manner after or as if no such certiorari had been awarded. [See 28 Car. 2. 1. 12. 1. 2. &c. borders inserted in this division.]

s. 3. And for the better discovery of such higler, chapman, carrier, innkeeper, alehouse-keeper and victu-
aller, shall offer to buy or sell any hare, pheasant, partridge, moor, heath-game or grouse, and shall within three months make discovery of any higler, chapman, 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-	ridge, moor, heath-game or grouse, so shall be convicted upon oath of two credible witnesses, by virtue of this act, for such discovery and information.

s. 4. And it is further enacted, "That if any person or persons, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, ferret-degs, hares, hucksters, tonds, or any other engine to kill or destroy the game, and shall within three months make discovery of any hare, pheasant, partridge, moor, heath-game or grouse, or shall receive any such hare, pheasant, partridge or moor, heath-game or grouse, so shall be convicted upon oath of two credible witnesses, by the justice or justices of the peace where such offence is committed as aforesaid, the person or persons so convicted shall forfeit the sum of five pounds; one half to be paid to the informer, and the other half to the poor of the parish where the sum was committed; the same to be levied by distraint 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, as aforesaid, and for want of such distriss the offender or offenders shall be sent to the house of correction for the space of three months, and that it shall and may be lawful to and for any of such Majestv's justices of the peace in their respec-
tive counties, riding, cities, towns corporate or liberty, and the Lords and Ladies of his, her, their, 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 engine to kill or destroy any hare, pheasant, chapman, carrier, innkeeper or victualler, or any other person or persons not qualified by the laws to keep the same to their own proper use, without being accountable to any person or persons for the same; and that it shall and may be lawful to the Lord or Lady of his or her respective lordship or manor, by writing under his or her hand and seal, to empower his or her gamekeeper or game-keepers upon his or her own lordship or manor, as aforesaid, to kill hare, pheasant, partridge or any other game whatsoever; but if the said game-keeper shall neglect or refuse to proceed in the execution of such authority 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 have given such power or authority in manner as aforesaid, such gamekeeper or game-keeper shall be convicted upon oath of such Lord or Lady of any manor, and upon the oath of one or more of such Majestv'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, and there to be kept to hard labour.

s. 4. Not qualified by the laws of this realm. The de-
fendant was convicted by Sir Henry Bateson, a justice of the peace of Middlesex, for unlawfully keeping a

huckster.
lurcher, and a gun to kill and destroy the game. New
exigence qualifications per hieus bivus regis ad hoc faciamur.
contra formam statutis in bonis ejus insert et preofari.
And this conviction being removed into the King's Bench
by certiorari, was qualified. As general as well as in
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 Raim. 1415.
On the facts then, conviction was taken,
that the defendant not being a person so qualified, and
enumerating different the several qualifications in
22 & 23 Car. 2. omitted a new qualification allowed by
this act, namely, that he was not a person authorized by
a lord (or lady) of a manor to kill game for his use.
And by an act then passed, the defendant was not
being a person qualified according to law, and so
on, it had been enough; but the qualifications being di-
strictly and generally mentioned, the omission of one is
there was a conviction for keeping a greyhound; reciting
that one William Tame came and informed, that the de-
defendant being a person not qualified to keep a greyhound,
did nevertheless keep one at such a place, and therewith
killed several hares; and that he being summoned did appear,
and was convicted, that he had done noth-
ing in exceee, and therefore the justices convined him.
It was objected, that the justice should set out, why
the defendant is 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
defendant, because it is not enough to seem to think
the conviction would be good, having followed
the words of the statute, and that if the defen-
defendant was qualified, he ought to have thrown it before
the justice, for being summoned for that purpose. Eyre J. stated
an objection, that he had taken upon him to say the defendant
was not qualified; but only the witnesses: for the conviction
runs, that the wit-
nesses being sworn faith, that the defendant being a person
no way qualified, did such a day keep a greyhound; so
that it appears, the witnesses have given the law to the ju-
tice, and take upon it to judge of the defendant's qualifications,
and the justice is only made use of an ins-
strument, 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 witnesses; for he ought not to swear generally a man
is disqualified, since he is qualified with a general
good: This is only an invention, to support a conviction
in general terms, which would be bad if the particular
facts were alleged. Pratt J. Where the justices have a
summary jurisdiction, and no appeal lies (as in this case),
we must keep them up firstrate to the law, and I should
be glad if we could make them set out the whole parti-
cularly. The case was adjourned; and afterwards Pen-
gally ferjeant mentioned two cases, Q. & Hoptaward, E.
12 Ann. there was it, "not being qualified, licenced, or au-
torized 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
reason declared to be, because the witnesses had taken upon
them to judge of the qualifications. Siran. 66.
Shall keep or use any greyhounds, hating-dogs, hares,
beets, terriers, or any other enginy or engin
the game] The defendant was convicted on 5 Ann. c. 14.
for using a greyhound in killing four hares, per good be for-
feited 20.— Reeve excepted to the conviction, that the
act of parliament had only given the justices jurisdiction
to convinct on the oath of one of the witnesses, whereas
this was upon his own confession, which he in-
filled the justices had no power to take; and it follows in
the act, that the person to convict shall forfeit, which word
"be is relative to the former method by oath of one
or more credible witnesses: and he put the common
cases upon the oath of a poor person, which must be upon
complain of the churchwardens or overseers: the justices
having jurisdiction only in that manner. Sed per curiam,
(futer Eyre J.) The conviction must be confirmed.
The intent of mentioning the oath of one wittes
was only to direct the justices, that they should not convic
on his evidence: Suppose the confession had not been before
the justices, and before two witnesses. Who had been
filled, that would be convicting him on the oath of wittes,
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 wittes,
the party is tortured unto confession. Hence the
justices had a better evidence than the oath of any single
witness, and it is a monstrous thing to say that a better
power of evidence shall not do. Eyre J. contra, thought
there was no occasion to carry this act of parliament
for that, by an act 22 & 23 Car. 2. cap. 20, giving power to con-
ven for this office upon confession, and that it
ought to have been a conviction upon that
flate. The conviction was confirmed. Siran.
K. Conviction on 5 Ann. cap. 14. for keeping a lurcher
to destroy game, not necessarily for defence of a house, or for a farmer
from hurt. That it is not known be 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.
that the justices, keep or use, so that the bare keeping a
lurcher, is not a defence; and for this was determined in the
case of The king against King, Paf. 5 G. B. R. which was
a conviction for keeping a gun; and it was not
 doubted by the court, whether the keeping a gun
was not enough to be thrown, but the only question they
made was, whether a gun was such an engine as is taken
in that statute: And in that case a difference was taken as to
keeping a dog, which could only be to destroy the game,
and the keeping a gun, which a man might do for the
defence of his house. The conviction was confirmed.
The defendant was convicted for the office of peace for
keeping 2 guns, contrary to 5 Ann. cap. 14, and it was
objected, 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 convicted: yet they are only such
as can only be used for destruction of the game, whereas
a gun is generally used for defence of a house, or for a farmer
from hurt. The conviction was confirmed, 5 Ann. cap. 12.
Curiam 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. having the general words
other engines, shall the store be taken to include the gun.
Sed per curiam. That was the case of The king against King, Paf. 3 Gen.
but never directly decided. And upon consideration we are of opinion, that a gun
differs from nets and dogs, which can only be kept for
an ill purpose, and therefore this conviction must be
quashed. Siran. 1098. Tin. 11 Gen. 2. King v.
Gardiner.
Conviction on 5 Ann. cap. 14. for keeping a gun not
being qualified; and exception was taken by Mr. Fen-
cherley, that there was not a reasonable commons, for it
was made on 5 October to appear the same day, which
might be impossible upon account of distance, or the com-
munes beingerved late, and his wittes thereon did not get
get together on free warning: then it is to appear apud
paroll predicti, whereas there are two parishes mentioned
before, for the man may have gone to one, whilst they
were convicting him at the other. Solk. 181. Warg.
centa. The defendant appeared at the time and made
defence, so that cures all defects in the commohns. 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 Warg.
It does, for they distribute part of the penalty to the poor
of the parish of Cledsheld in com't Kente, infra quom parcell
offentium prad cuumfamm fuit. And the justices are
iuices of the county of Kent, and file themselves to.
Supplemen. At 7 Gen. 5, it was qualified for per
curiam. Their jurisdiction must appear otherwise than as
K K

Strange moved to quash an indictment for killing a hare, this not being a matter indictable, the statute of 5 Ann. cap. 14. appointing a summary proceeding before justices of the peace, and cited Rex v. Martin, for the 1st time. The question was whether if an alehouse was quashed, because the statute 3 Car. 1. cap. 3. had directed a particular remedy. Et per cautam; The indictment must be quashed. Stran. 679. Hil. 12 Geo. 1. King v. Buck.

By fl. 9 Ann. cap. 25. fl. 2. it is enacted, That if any person of phaenofent, partriges, moor, hearth-game, or groule, shall be found in the shop, houfe, or poftelion of any perfon or perfons whatsoever not qualified, in his own right, to kill game, or being inculped thereto under fome fentence to fqual, the fame fhall be adjudged, deemed and taken to be an expoing thereof to fale within the true intent and meaning of the above statute 5 Ann.

And by fl. 28 Geo. 2. c. 12. fl. 1. If any perfon or perfons whatsoever, whether qualified or not qualified to kill game, fhall elfe, expofe or offer to fale, any hare, phaenofent, partrige, moor, hearth-game, or groule, for every fuch offence be fubjeft and liable to the fame forfutes, painf and penaltries, as are inflicted by the faid recited act upon higfars, champagne, carriers, inn-keepers, viitufers or ale-houfekeepers, for buying, felling or offering of game to fale. And further, if any fuch phaenofent, partrige, hearth-game or groule, fhall be found in the fhop, houfe or poftelion of any pofterier, falefman, fihmonger, cooker, or pafty-cook, the fame fhall be adjudged, deemed, and taken to be an expoing thereof to fale, within the true intent and meaning of this act, and the faid recited act, or any other act, which faid forfutes fhall be recovefed, and fuch penaltries inflicted, by fuch means, and in fuch manner, and from and within fuch time, and fhall be aplied to fuch ufe as are prefibed by the faid recited act, or by any other act or acts, for the prefervation of the game.

By fl. 5 Geo. 1. cap. 19. fl. 1. Where any perfon fhall, for any offence againft any law in being for prefervation of the game, be liable to pay any pecuniary penalfy upon conviflion before any juftice of peace; it fhall be lawful for any other perfon either to proceed to recover the faid penalfy, or any part thereof, for the fum by fuch penalfy as forfeited, on the cafe, bill, plaint or information, in any court of record at Wifhminfter, and the juftiff, if he recovers, fhall have double cofts.

2. Provided, that all {uits to be brought by force of this act fhall 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 fccond term] after the offence committed; and that no offender fhall be prefibed for the fame offence both by the way prefcribed by this law, and by the way prefcribed by any of the former laws; and that in cafe of any fercnd prefecution, the perfon doubly prefecuted may plead in his defence the former prefecution pending, or the convifHon or judgment thereupon.

Debt on 8 Geo. 1. cap. 19. for the penalty of 30l. by using a hound to deftroy game. And after a verdict for the plaintiff the judgment was arrested for 5 Ann. c. 14. by his not being hound, and the words other enines come after nets, &e. and are applicable only to inanimate things, and this being a penal law cannot be extended. The flatute 22 & 23 Car. 2. c. 25. has indeed general words, or any other dogs to deftroy game, but this is not a conftitution on that flatute. Stran. 1126. Hil. 13 Geo. 2. Hooker v. Wile.

By fl. 2 Geo. 3. c. 19. fl. 5. It fhall be lawful for any perfon whatsoever, to fure 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 cafe, bill, plaint, or information, in any of his Majesty's courts of record at Wifhminfter, wherein no cffen, wagger of law, or more than one impaliance, fhall be allowed; and wherein, if he recovers, fhall have his double cofts; and that no part of the faid penalty, re-

covered in any fuch fuit or action, fhall be paid, or ap- plied to or for the ufe of the poor of the parish wherein fuch offence fhall be committed; any law or ufage to the contrary notwithstanding.

Sect. 6. Provided always, and be it enacted, That no fhall in any cafe, bill, plaint, or information, fhall be brought or exhibited, but within the space of fix months next after the matter or thing done, for which the fame fhall be commenced or exhibited as afofaiid.

3. Statutes concerning the several kinds of game, with cures determined upon them.

Conier. Stat. 21 Ed. 1. fl. 2. If any warreneer fhall find any trepofers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to fhall unto him, but do flee, or defend themselves; although the warreneer, or his affidavit, do kill fuch offenders, they shall not be troubled upon the fame.

Stat. 1 Hen. 7. c. 7. When information fhall be made of unlawful hunting in a warren by night, or with painfled large coyne, the fcentering of which fhall amount to the peace, of any perfon suspected, he may make a warrant to bring fuch perron before himself, or any other of the faid council or juftices; and if fuch perron fhall conceal the faid hunting, or any of his accomplies, it fhall be felony; but if he confefs, it fhall be but treble felonie to him, which fhall be deemed as afection, and Lord Coke's Commentary on it in A new Treatife on the Law of the Game, lately published, pag. 9—16.

Sect. 3. Stat. 1. c. 13. fl. 2. If any perfon fhall in the night-time enter into any grounds inclosed, and used for keeping of coyne, and fright, drive out, take, or kill any coyne: he fhall, on conviction at the fuit of the King or of the party, at the affifes or jeftions, on indictment, bill, information, or otherwise, forfeit 10l. to the party grievous, or trelble damages and coyne, at the election of the party; and find forfeites for his good behav- ing for seven years, or continue in prifon till he does.

Sect. 5. If any perfon not having lands or heredita- ments of 40l. a year, or not worth in goods 200l. fhall use any gun or bow to kill coyne, or fhall keep any fer- rets or coney-dogs (except he has grounds included for keeping of fuch coyne); or keep for the breeding or keeping of any coyne, or coyne-dogs, in fuch cafe, any perfon having 100l. a year may feize the fame to his own ufe.

Sect. 7. But this fhall not extend to any grounds to be included and ufed for coyne after the making of this act, without the afent of the party.

Stat. 22 & 23 Car. 2. c. 25. fl. 4. If any perfon fhall at any time enter wrongfully into any warren or ground lawfully ufed or kept for the breeding or keeping of coyne, whether it be inclosed or not; and there fhall chafe, take, or kill any coyne; and fhall be thereof convicted in one month after the offence, before one juftice, by confelfion, or oath of one witnefs, he fhall yield to the party grievous treble damages and coyne, and be imprifonned three months, and after, till he find forfeites for his good behaving.

Sect. 9. Provided no perfon fhall kill or take in the night any coyne upon the borders of warrens, or other grounds lawfully ufed for the breeding or keeping of coyne (except the owner or poiffessor of the ground, or perfons employed by them); on pain that the offender, on conviction in one month after the offence, before one Juftice, by confelfion, or oath of one witnefs, fhall allow to the party injured such damages, and in fuch time as fhall be ap- pointed by the juftice, and over and above pay down presently to the overfeer for the ufe of the poor fuch fun not exceeding 10l. as the juftice fhall appoint; which it is fhall be lawful to the juftice fhall commit him to the comittee for correction for fuch time as he fhall think fit, not exceeding one month.

Sect. 6. If any perfon fhall be found or apprehended fering or uing any fakes, or other like engines, and fhall be thereof in like manner convicted, he fhall give
to the party 2 ried such damages, and in such time as the justice shall appoint, and pay down presently to the overseer for the use of the poor such sum not exceeding to 10s., as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction not exceeding 40 days.

Sect. 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 justly killing them if they eat up his corn; but no action lies against the owner of the warren.

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.

A commoner cannot kill the coyes which are upon the common. Gethb. 122.Cro. Ellis. 876. 1 Brede 227.

Lords of the soil may make coney-burrows. 1 Lestw. 1073. Transgressors for killing a man's coyes in his copo. Lam. 350. 

Justices of peace cannot affile a fine certain for killing of rabbits in a private warren, Ld. Raym. 151. Information in nature of a Quo warranto is not to be filed at the instance of a private protector for setting up a warren. Ld. Raym. 1490. See the treatise preceding at full length, in A New Treatise on the Laws of Game, lately published, page 21-42.

By sect. 9 Geo. 1. c. 22. commonly called the Black Act, if any person being armed and disguised, shall appear in any warren or place where coyes are usually kept, or unlawfully rob any such warren; or (whether armed and disguised 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.

Stat. 5 Geo. 3. c. 14. sect. 6. Whereas there are many instances where the land in this respect is insufficient for cultivation, and yet the game are capable of rendering great profit, by the breeding and maintaining coyes, as well to the owners of such lands, as to a multitude of industrious manufacturers, who gain their livelihood by working up coye wool: And whereas a great part of the said land is already used as warrens, in the breeding and maintaining coyes, but, because divers disorderly persons, neglecting their own lawful trades, have betaken themselves to the taking, killing, and stealing of coyes, in the night-time, whereby the owners and occupiers of such warrens are greatly discouraged, and many fields which were formerly capable of producing good hay have been destroyed, and the said coyes have been eaten, and other coyes have been deterred from flocking other lands, to the great prejudice of the manufacturers of this kingdom: And whereas the provisions already subjoined have, by experience, been found insufficient for the ordinary preservation of coyes 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, wilfully and wrongfully fly, in the night-time enter into any warren or grounds lawfully used or kept for the breeding or keeping of coyes, although the fame be not included, and shall then and there wilfully and wrongfully take or kill, in the night-time, any coye or coyes, against the will of the owner or occupier thereof, or shall be aiding and abetting therein, and shall be convicted of the fame before any of his Majesty's justices of oyer and terminer, or general gaol delivery, for the county where such offence or offences be committed; every such person and persons for offending, and being thereof lawfully convicted in such manner aforesaid, shall, and may be transported for the space of seven years, or suffer such other lether punishment by whipping, fine, or imprisonment, as the court, before whom such person or persons shall be tried, shall, in their discretion, order and direct.

Sect. 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.

Sect. 8. And whereas great mischief and damage has been, and still may be, occasioned by the increase of coyes upon the sea and river banks in the county of Lincln, 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 contained shall extend to, or prevent any person or persons from killing and destroying, or from taking and carrying away, in the day-time, any coyes that shall be found on any sea or river banks, erected, or to be erected, for the preservation of the adjoining 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 Lincn, and to kill, destroy, take, and carry away in the day-time, to his or their own use, any coyes so found upon any such banks, land, or ground as aforesaid, within the said county, he 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 notwithstanding.

Sect. 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 one halfpenny.

Dor. Stat. West. 1. (3 Ed. 1. c. 20.) If trespasers in parks be thereof attained 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 term, clear and free of the King's pleasur (if they have whereof,) and then shall find good sureties, otherwise 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 sureties, they shall abjure the realm. And if none sue within the year and day, the King shall have the suit.

Trespasers.] This is, when a man either chafeth in a park, or endeavours to kill some of the game thereof. 2 Lestw. 199.

In park:] 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 of the same. 2 Lestw. 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, pages 43-47.

Stat. 21 Ed. 1. c. 2. If any forester or parker shall find any trespasers 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 disobeying the King's peace do flee, or defend themselves with force and arms, aloft such forester, parker, or their assistants, to kill such offenders, they shall not be troubled upon the fame.

Stat. 1 Hen. 7. c. 7. When information shall be made, of a man hunting in any forest or park, by night, or with painted coyes, to any other place, but to a justice of the peace, of any person to be unjustly 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 wilfully conceal the said hunttings, or any person with him defenlive therein, that then the same conceal ment be, against every such person so concealing, felony, but if he be convicted of the truth, and all that he shall be examined of, and known in the trial, be freed, and the said offences of hunting by him done, shall be but trespass noisible at the next general sessions. And if any refrus or disobedience be made to any person having authority to execute the warrant, by any person the which so should be arrested, so that the execution of the warrant thereby
be not had, then the said recous and difference shall be felony. And if any person shall be convicted of any such hunting, shooting with printed faces, visors, or otherwise disfigured, to the intent they should not be known, or of unlawful hunting in time of night, then the said warrant shall be valid, to have like punishment as he should have if he were convicted of felony.

When information shall be made.] This information must be made by the said naturalists, and it must be in writing, and be delivered in the same manner as the warrant. 3d part. c. 21. Sec. the foregoing part, and Lord Coke's Commentary upon it at full length in a New Treatise on the Laws of the Game, lately published, page 9—16.

Stat. 10 Hen. 7. c. 11. No person, not having any park, chase or forest of his own, shall have any cause to be heard before the said twelve buckstallants, on pain of 10l. a month, to him who shall refuse by act of debt: or the justices in feis 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. fett. 3. If any person unlawfully break or enter into any park impaled, or any other feudal ground closed with wall, pale or hedge, and used for the breeding of deer, or any where hunting be made or take, or take to hunt, 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 months, and after the said three months expired, shall find sureties for his good behaviour for seven years; and if he remain in prison until he find such sureties during the said seven years.

Stat. 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.

Stat. 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 eyre and terminer, justices of affize, and justices of peace, as elsewhere in any other the Queen's courts of record; and upon satisfactiion of the treble damages, or upon the confession thereof by the party, before the justices in open seisin, it shall be at the liberty of the party grieved, to receive the forfeiture or fine above mentioned.

Stat. 6. The justices of eyre and terminer, justices of affize, and justices of the peace, and gaol delivery in their seis, shall have power to inquire, hear and determine the offences aforesaid, as well upon informations taken before them, as by bill of complaint, information or any other action.

Stat. 7. If any person shall be bound before any of the justices to the Queen, for his good behaviour for seven years, according to this act, and the party so bound shall within the seven years come before the justice of peace of the county, where the offence was committed, in pursuance of the said conviction, and be convicted of such offence, and satisfy the justice grieved according to this act; the justices may within the seven years discharge the recognizance and the party.

Stat. 3 Jac. 1. cap. 13. fett. 2. If any person shall unlawfully enter into any park, or grounds inclosed with wall, pale or hedge, and used for the keeping of deer or coys, and unlawfully hunt, chase, or kill, or any deer or coys within such park or grounds, against the will of the owner, 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 the treble damages and costs, to be addited by the justices before whom to be convicted, and shall find sureties for his good abusiness for seven years, or else he shall remain in prison until he find such sureties during the said seven years.

Stat. 3. The justices of eyre and terminer, justices of affize, justices of the peace and gaol delivery in their
dear wounded, taken or killed thirty pounds, to be levied by
diffs and sale of goods by warrant from the justice
before whom the conviction shall be made; one third
part to the informer, another third part to the poor
of the parish where the offence shall be committed, and
the other third to the owner of the deer. And for want of
diffs they shall be imprisoned a year, and set on the
pillage an hour, on some market-day in the town next
adjoining to the place where the offence was committed,
by the chief officer of such market towns or his under
officers.

Sect. 3. Convicts, headboroughs and tithemen, by
a justice’s warrant may enter and search as for stolen
goods the houses and other places of suspected persons;
and if any venison or skins of deer, or tolls be found,
shall be seized and apprized in the same manner and
by the same rules of evidence; and if he do
not give a good account how he came by them,
or in convenient time produce the party of whom he
bought them, or prove such fale upon oath, he shall be
convicted of such offence, and be subject to the penalties
hereby inflicted for killing a deer.

Sect. 4. The convict or other officer or persons pro-
secuting may detain such offenders in custody, if they do
not presently pay the monies due by the conviction,
till a return may be made of the warrant for diffs, such
detainer not exceeding two days.

Sect. 5. No return or entry of any act under them,
may reftit such offenders, and be indemnified as if such
fact had been committed in an ancient chase or park.

Sect. 6. No certiorari shall be allowed to remove any
proceeding upon this act, unless the party convicted shall
before it be allowed become bound to the procurator in fifty
pounds for his sureties to bring before the justice
of the fite, to pay within a month after the conviction
confirmed, or a procedendo granted, their costs to be after-
tained upon oath.

Sect. 7. No offender punished by virtue of this act
shall incur the penalty of any other law for the same
offence.

Sect. 8. Persons prosyected for any thing done in pur-
fuance of this act may plead the general issue.

Sect. 9. If any persons shall in the night-time pull
down or destroy the pales or walls of any park, forest,
close, or other ground inclosed where deer shall be kept;
such persons being convicted by oath of one witness
before a justice of peace, shall by such justice’s warrant suffer
imprisonment for three months.

Sect. 2. Unlawfully hunt, kill] Where a man kills deer
in pursuance of a propered right which he has, he is not
within the intent of this, or any other act against deer-
fealing. L. Rom. 584.

Where deer are usually kept] These words extend only
to ground inclosed. Stran. 1119.

A person who for killing deer was removed into the
King’s Bench by certiorari, and was quashed, because it
is said only that he killed deer in quaedam loco, where
they had been usually kept, and did not say inclosed. L. Rom.
791.

Or be aiding or afflicting therein] On a conviction, the
question was, whether he who went dogs to another to
hunt, was aiding and afflicting therein, to wit, in the
hunting, and not the opinion of three judges he was;
but Holt Ch. J. was of a contrary opinion, for this being
a penal law shall be construed strically; and if so, then
he who lent the dogs could not be afflicting in the act
of hunting, and to none within the words of the statute,
aiding or afflicting therein, that he might be afflicting there-
unto. 2 Sect. 545, 543.

And shall be held lawful] There ought to be a summons
in this and in all other like cases, to warrant a conviction;
and that ought to give a reasonable time to appear
in. But if the defendant hath appeared, it curtes the want of
summons. 3 Sal. 181, 383. A deer-fealer may be
convicted before appearance, if duly summoned: And the
defendant may appoint an attorney to defend him, and the
judges cannot enforce him to appear in person. Stran.
44.

Vol. II. No. 82.

Oath of one witness] This must not be upon the single
oath of the informer; and a conviction was quashed for
that reason; divers convictions having been quashed for
the same reason before. Ld. Raym. 1545. Stran. 316.

Prosecuted 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 in-
formation, and that it was held good to conviction
be professed within a year after the fact; for that it is a
good commencement of the suit, and it is from that
the composition is made in all such cases. 1 Sal. 383.
But by the Black Act, this prosecution may be
continued at any time within three years after the offence.

Wounded, taken or killed thirty pounds] Where several
persons are convicted, they shall forfeit each 30l. and
not one sum of 30l. for all. 1 Sal. 182.

Leved by diffs] Tho’ the sale of the goods is not mentioned in
the statute, yet nevertheless where the law
gives a diffs for a publick benefit, the officer may fall. 1 Sal.
579.

By warrant from the justice] Altho’ the convictable 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 indictible if he do not. But he need
not return as a warrant of his own, 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 Sal. 381.

One third part to the informer] The penalty need not
be distributed by the conviction, viz. 10l. to the in-
former, 2ol. to the poor, and 10l. to the party griev’d;
for the judgment in such cases seldom mentions a disbur-
fen; it is enough to say, that he is convicted, and
heard forfeited 30l. according to the statute. 1 Sal.
383.

Sufficient diffs] If the justice finds there is nothing to
detrain, 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
refuter. L. Rom. 545, 1195, 6.

The defendant was committed for want of diffs, and
the warrant for that, it had been certified to the justice by the
convictable, that there was not sufficient diffs. It was objected, that there ought to have been
a warrant to levy, and a return to that, that there was
no diffs; it may be the convictable only told him so.
But by the court, the warrant was void, as it lacked the
word certificated imports to be in a legal manner. Stran.
263. See all those cases at full length in A New Treatise

Stat. 5 Geo. 1. cap. 15. sect. 1. No certiorari shall be
allowed to remove any proceedings concerning any matter in
the act 3 & 4 W. IV. & M. cap. 10. 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 sureties to be approved of by the justice,
in the penalty of 30l. 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 person
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 cer-
tiorari had been awarded.

Sect. 2. After confirmation of any conviction on the
said statute by any superior court, and delivering the rule
to the justice, whereby such conviction hath been so con-
formed, such justice may proceed against the party con-
victed as in the penalty of 30l. for each offence had been
laid.

Sect. 3. Any person sued for any thing done in pur-
fuance 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 pas,
for the defendant, &c. the defendant shall have treble
costs.
Every person convicted by virtue of the said act, shall, before he be discharged out of custody, be brought 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 refusal of the sureties of the said bonds, shall be committed to the county jail until 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 Higheimster, which penalties shall be distributed in the same manner as the forfeitures are by the said statute, and the party convicted shall be likewise liable to the penalties therein.

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 deer-stealing without the consent of 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 distriffs, and distributed as the forfeitures in the said act are to be, and for want of distriffs he shall be imprisoned three years, and be set 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.

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 of such park, &c., or of one witness, before one justice of the county where the offence is committed, he shall be subjected to the forfeitures by the act 3 & 4 W. & M. cap. 10, inflicted for killing one deer.

The defendant being brought up from Newgate by the order of the judges, it appeared upon the return, that he was convicted for deer-stealing, as the statute of the 3 W. &c., 12, directeth, not having sufficient distriffs; and that it was done by one justice under the statute of the 3 W. &c.

And excepted to the warrant, that it doth not appear, the conviction of the defendant thereof, 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 jurisdiction after confirmation, which he had not before; and therefore he ought to have 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 statute is not confirmed: And the statute doth not give the justice a new jurisdiction, but only revives his old one, which was superseded by the common. And the defendant was remanded. Sir. 293.

Stat. 5 Geo. 1. cap. 28, sect. 1. If any person shall enter any park or other enclosed ground, or wood, and therein wound or 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 certain work.

No thing herein shall repeal any former law made for the punishment of deer-stealers, and when any offender shall be punished by force of this act, he shall not be punished by force of any other law.

There be several instances against the statute 3 & 4 W. & M. cap. 10, may be commenced within three years from the offence committed.

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 ill-gotten the same, and that he did not produce the person from 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 fined to the penalties for killing a deer, by Stat. 3 & 4 W. & M. cap. 10. See title Black Act.

Sect. 7. If any person who shall hereafter be convicted of unlawful hunting, killing, wounding, or taking deer in any uninclosed forest or chase where deer are usually kept, shall during the continuance of the act 9 Geo. 1. cap. 22, [which see in Black Act] be guilty of a second offence of the like nature, and shall thereof be convicted upon indictment 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.

Sect. 8. The defendant may be tried for such second offence before the justices of the shire, oven 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 procurator, 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.

Sect. 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 course, hunt, take in toils, kill, wound, or take away any red or fallow deer, and shall there unlawfully beat or wound any person or keep or possess such forest, chase or park, their servants or allies 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 guilty of felony without benefit of clergy.

Stat. 28 Geo. 2, cap. 19, sect. 3. Whereas the burning and destroying of gofs, furze, and fern in forests and chasses, doth destroy the cover necessary 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 gofs, 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 oaths of two witnesses, or by verdict or confession, he shall be fined not exceeding five pounds, or less than forty shillings, half to the informer, and half to the poor, and if not forthwith paid, to be levied by distriffs; and if no sufficient distriffs 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.
month, nor less than ten days, there to be whipt, and kept to hard labour.

Stat. 9 Ann. c. 25. § 3. If any person whatsoever shall take or kill any mhoor, heath-game, or grouse, in the nature, place, or aught, not to offend a justice, on oath of one witness, forfeit five pounds, half to the informer, and half to the poor, by diffrets; and for want of difcrets to be sent to the house of correction three months for the first time, and for every other offence four months.

Stat. 1 & 2 15 Hen. 8. c. 10. No perfon or persons, of what estate, degree or condition they be, from henceforth shall traxe, destroy and kill any hare in the snow with any dog, bitch, or otherwise. And that the justices of the peace, within every shire, at every fifeons of every county, by their sentence, shall have the power and authority to inquire of such offenders. And after such infinuations found, the said justices of the peace, and stews of for, for every hare so killed, Half to be upon every Such offender six shillings and eight pence, to be forfeited to our said Sovereign Lord, that shall be so found by the justices of peace in their seessions, and the forfeiture found in every leet to be to the Lord of the leet.

Stat. 23 Eliz. c. 10. § 5. If any manner of persons shall hunt with spanels in any ground where corn or other grain shall then grow (except in his own ground,) at such time as any earred corn or grain shall be growing in that place; and if any shall be found to hunt, or be thereof convicted at the aijces, affecions, or leet; he shall forfeit 40s. 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 for paying two hundred pounds to the publick,

Stat. 1 1 John c. 1. § 27. 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 for the use of the poor, 20s. for every hare; or after one month after his commitment become bound by recognizance with two sureties before two justices, in 20l. apiece, not to offend again in like manner. The recognizance to be returned to the next sessions. And every person, who shall traxe or course any hares in the snow, 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, 20s. for every hare; or after one month after his commitment become bound by recognizance with two sureties before two justices, in 20l. apiece, not to offend again in like manner. And every person who shall at any time take or destroy any hare, with hare-pipes, cords, or any such instruments or other engines, shall forfeit for every hare 20s. in like manner.

Stat. 4. Every person who shall fell, or buy to sell again, any hare, shall, on conviction at the aijices or fetions, or before two justices out of seessions, forfeit for every hare 10s. half to the poor, and half to him that will sue.

Stat. 23 & 24 Car. 2. cap. 25. sect. 6. If any person shall be found or apprehended setting or using any faires, hare-pipes, or other like engines, or by any such engines, as by any conviction, 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 overrever for the use of the poor, such sum not exceeding the sum of money which 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 5l. for every hare, by the information of one, by diffrets; and for want of diffrets to be sent to the house of correction for three months for the first offence, and for every other offence four months.

G A M

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By Stat. 9 Geo. 1. c. 22, commonly called the 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 not) shall use any perfon in custody for either of the said offences, as a means of paying him with any such unlawful act; he shall be guilty of felony without benefit of clergy.

Handker and provosting. Stat. 34 Ed. 3. c. 22. Every person who fineth a tawsk, terecist, later, or laterc, or other hawk that is left, shall presently bring the same to the sherif; and the sherif shall make proof thereof and despatch it 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 is not challenged in four months, the sherif shall have him, making good the expense, 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 feel any hawk, and the same carry away, not doing the ordinance afore-said; it shall be done of him as of a thief, thatareth a horfe or other thing. (That is, he shall be guilty of felony, but shall have his clergy. 3 Bay. 68.)

Stat. 11 Hen. 7. c. 17. No manner of person, of what condition or degree he be, shall take or cause to be taken, or destroy, or destroy to his own ground, or any other man's, the eggs of any falven hawk, or hawk, or hawk, or hawk, with purpose to destroy the same in any manner. And the said hawk shall be upon the ground where the eggs were taken. And no man shall bear or have a hawk of the breed of England, called a nyfel, godhawk, tafeil, later, later, tafeil, or taseil, or hawk, or hawk, or hawk, on pain of defeating 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 defeating 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, faltcon, godhawk, tafeil, later, later, or later, in their warren, wood, or other place; nor purposely drive them out of their covertts accomplished to breed in, to cause them to go to other covertts to breed; nor lay 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 aijices, assizes, or inquisitions, on indictment, 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 forfeites for his good behaviour for seven years, or remain in prison till the same.

Stat. 23 Eliz. c. 16. If any person of any manner of hawk in another man's corn after it is eared, and before it is hocked; and be convicted at the aijices, eggs, or leet; he shall forfeit 40s. 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, snares 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 10l. half to him that shall sue, and half to the owner or possessor of the ground where they shall be taken.

Stat. 23 Eliz. c. 16. If any person, of what estate, degree or condition forever, shall take, kill or destroy any pheasants or partridges in the night-time; and be thereof convicted at the aijices, eggs, or leet; he shall forfeit for every pheasant 20s., and for every partridge, 6d., half to him that shall sue, and half to the lord of the manor.
manor, unless such lord shall likewise or procure the fish taking or killing, in which case the said half shall go to the poor, to be recovered by any warrant, suit, or action brought in the next court after conviction, or shall be imprisoned for one month. And moreover, besides such forfeiture and imprisonment, he shall give bond to some justic of the peace, with good security not to offend again in like manner for the space of two years.

Sect. 1. 7 Jac. 1. c. 27. sect. 2. Every person who shall fcout 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 fined half a pound in the next; and on conviction before two justices, by confession, or oath of two witnesses, be committed to goal 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 his commitment, become bound by recognizance with two sureties, forfeit for every pheasant 10l. and for every partridge 20l. half to him that will sue, and half to the poor.

Stat. 7 Jac. 1. t. 11. selt. 2. Every person whatsoever, who shall hawk at, destroy or kill, whether for game or partridge, with any kind of hawk or dog, by colour of hawking, between the first of July and the last of August, on conviction before two justices, by confession or oath of two witnesses, in six months after the offence, be committed to goal for one month, unless he pay upon conviction to the churchwardens or overseers for the use of the poor, 40l. for every such hawkings at any pheasant or partridge, and 20l. for every such pheasant or partridge which he, his hawk or dog shall take or kill.

Sect. 7. Every free warrener, lord of a manor, or freeholder feised in his own or his wife's right, of 40l. a year esate of inheritance, or 50l. esate of 80l. 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.

Sect. 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 goal for three months, unless he forthwith pay to the churchwardens or overseers 20l. for every pheasant or partridge; and further to become bound by recognizance of 20l. before one justice, that he shall not therefor kill or destroy any pheasant or partridge. The recognizance to be filed at the next assizes.

Stat. 9. 6 Hen. 8. sect. 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 reason of which informations and be sent to the house of correction for three months for the first offence, and for every other offence four months.

Stat. 2. 6 Geo. 3. c. 19. For the better preservation of this game in the kingdom, may it 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, kill, destroy, carry, sell, or have in his or her possession, or be in any pheasant, 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 fowl, commonly called black-game, between the first day of January and the 20th day of August of any year, shall be shot or killed by any person, whether on the day without the licence of a justice; and that all the money to be forfeited therein shall be paid into his Majesty's exchequer, and there to remain and be kept to hard labour for any time not exceeding three calendar months.
wild fowl with their spaniels only, without using a net or other engine, except the long bow.

Sect. 5. No person from March 1. to June 30. yearly, shall take or destroy the eggs of any mallard, teal or other water fowl, on pain of a year's imprisonment, and of forfeiting for every egg one shilling, half to the King, and the rest, in half and half, for the use of the court, or debt; or the justices of the peace may determine the same as in cases of trespas.

No manner of person, from the first day of March to the last day of June yearly, shall, by day or night, take or destroy any eggs of any kind of wild fowl, from time in any nest or place, of the court they shall chance to be laid by any kind of the same fowl; on pain of imprisonment for a year, and to forfeit for every egg of a burdaff 20 l. of a bitour or shavelard 8 d. and of other wild fowl (except crows, ravens, blackbirds or other fowls used to be eaten) 2 l. half to the King, and half to him that shall give by action of debt: Alto the justices of the peace may determine the same, as in cases of trespas.

Stat. 12 1. 5. 1. 27. 2. Every person who shall flout at, kill, or destroy with any gun or bow, any mallard, duck, teal or wigeon, and the fame be proved by the confession of two witnesses, or by the admission of the person that shall be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor 20 l. or after one month after commitment become bound by recognizance with two sureties, before two juftices, in 20 l. each, not to offend again in like manner: Which recognizance shall be returned to the person committed.

Stat. 9 Ann. cap. 25. sect. 4. relating, That whereas very great numbers of wild fowl of several kinds are destroyed by the pernicious practice of driving and taking them with hayes, tunnels, and other nets, in the fens, lakes, and broad waters, where fowll resort in the mauling fTeaTe, and that at the time, the fowll are fick and moulding their feathers, and the flesh unsavoury and unwholesome, to the prejudice of those who buy them, and to the great damage and decay of the breed of wild fowl; it is therefore enacted, That if any person or persons whatsoever, [between June 1. and October 1. yearly, 10 Geo. 2. c. 32.] shall by hayes, tunnels, or other nets, drive and take any wild duck, teal, wigeon, or any other fowl, commonly reputed water fowl, in any of the fens, lakes, broad waters, or other places of resort for wild fowl in the mauling feaTe, fuch person or persons who fhall so offend, and thereupon be conveiTed before any one or more of her Majesty’s juftices of the peace, and committed, for fhich offence fhall be committed by one of more crefible wittneffes, fhall, for every wild duck, teal, or other water fowl fow as aforesaid, forfeit and pay the fum of five fhilling; 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 diftrefs and fale of the offender’s goods, by warrant under the hand and fce of the juftice and juftices of the peace before whom the offender fhall be convicted, rendering the overplus, (if any be) above the penaity, and one moiety thereof to the diftrefs, and for want of diftrefs the offender fhall be committed to fentence, for any time not exceffing 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 person or persons for offending fhall be convicted, fhall order fuch hayes, nets, or tunnels, that were used in driving the fowll of wild fowl, as aforesaid, to be fected and immediately destroyed in the presence of fuch juftice or juftices.

Cutting. It feems that by the Common law, the playing at cards, dice, &c. when praticed innocently and as a recreation, the better to fit a perfon for bufines, is not at unlawful, nor punishable for whatsoever 2 Vent. 175. 5 Med. 1. 1 Suld. 100.

Alfo it is agreed, that a perfon who wins money at gaming, may maintain a special indebitatus aiumfit to it; for the contract is not unlawful in itself, and the winner’s M m venturing
venturing his money is a sufficient consideration to inti-
mite him to the action. 3 Lev. 118. 6 Mod. 138.
5 Ac. 149. 2 Tert. 175.
But it seems to be the better opinion, that a general indebitatus assumpsit will not lie 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 case of gambling, but not for bargains on the cafe but where debts will lie, which must be on a contract executed, such as labour dues, or some other meritorious caufe. 6 Mod. 138. Lobb. 180. 5 Mod. 13. and Carth. 338. S. P. where it is said, that the chief reason of this opinion was, because the court would not countenance gaming, by giving such an easy remedy for mo-
ney won at play; and see 3 Lev. 118. and 2 Tert. 175.
But an indebitatus assumpsit 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-
positioned 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 on the 
judgment, 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 were paff,
then the wager dissolves, and each party shall have his money again. 2 Buc. Abb. 600.
And although gaming, in the manner as has been said, may be lawful, yet if a party 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 heinoufness of the offence. 2 Buc. Abb. 610.
Also all common gaming houses are nuisances in the 
eye of the law, not only because they are great tempta-
tions 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 neighborhood. 1 Hawk. P. C. 158.
Also from the destructive and pernicious consequences which such necessarily attend excessive gaming, both the courts of law and equity have shewn their abhorrence of it. Hence in a cafe where A. came to the house of B. and won of him 100l. which he carried away, and af-
fterwards won 100l. more, which he had in his po-
poffion, which B. and his servant took from him by vi-
vence, and A. having brought an action of trespafs, the 
court of Chancery granted an injunction. 1 Vern. 489. Sir Basil Firebrace v. Bret. 2 Vern. 71. S. C. where the cafe came to a hearing, and the defendant finding, that the court inclined so strongly against him, submitted to a propofition made by the coufels, which was after-
twixts decreed as by consent; and on this occasion the Lord Chancellor cited the cafe of Sir Cecil Bishop, and Sir Thomas Staple, that came before the Lord Chief 
Justice Hole in the King's Bench, upon a wager won at 
a horfe-race, where Lord Hole declared, he would give the defendant leave to impal from time to time.
So where one apprentice left to another 100l. at two 
fittings at which, 50s. of which 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 infifted by his anfwer, that he was unwilling, and declined playing for so much, 
and that he was preffed to it by the plaintiff. 2 Vern. 
291.
1. Statutes concerning gaming, and cafes determined upon 
them.
2. Atfans and pleadings.
3. Statutes concerning gaming, and cases determined upon 
them.
Stat. 33 Hen. 8. c. 9. fot. 11. No person thall for 
his gain, lucre, or living, keep any common house, alley, 
or place of bowling, croquet, croquet-cayls, half bowl, 
tennis, dice-table or carding, or any unlawful game, 
on pain of foullings a day.—But it was repeafed upon 
this clause, in the third year of Jac. 1. that if the greaf-
ests in an inn or tavern, call for a pair of dice or table, 
and for their recreation play with them, or if any neigh-
bour's play at bowls for their recreation, or the like, 
there are not within this statute; for all of the games be-
used in any inn, or tavern, or other house, yet if the 
Lords great tenants, then the gaming, or foreign or gain, but they play only for recreation, and for no gain at all; and for this the house, is not within the statute, nor is fuch 
perfon that plays in such house that is not kept for 
lucre or gain within the penalty of that law. Dott. 
cap. 49.
Sect. 12. Every person using and having any the faid 
houses, and there playing, shall forfeit foullings and 
eightence.
Sect. 14. And all and every jurtice of the peace, mayor,
thiifirs, and other head officers, may enter all such houses 
and places, where fuch games shall be fupposed to be 
holden; and as well the keepers of the fame, as also the perffons there reftoring and playing, may take, arrest and 
imprifon, and keep in prifon, until the faid keepers have 
found fureties to the King's fervice, to be bound by recogni-
tion or otherwife, no longer to serve, keep or occupy 
any fuch house, play, game, alley or place; and alfo that 
the perffons there fo found, be in like cafe bound therein, and not to keep any fuch houses, or to exercise from thenceforth, in, at or to any of the faiid 
places, or at any of the faid games.
Sect. 15. And the mayors, thiifirs, baillifs, confatables, 
and other head officers, within every city, borough or 
town, shall make due search weekly, or at the fartheft 
once a month, in all places where any fuch houses, or 
places shall be fupposed to be kept; and if they shall not 
make fuch search at the fartheft once a month, if the 
cafe fo require, every fuch perffon offending fhall forfeit 
foullings for every month.
Sect. 16. No manner of artificer, handcraftman, 
baker, baker's, or labourers, ferrar at hufbandry, 
journeyman or fervant of artificer, mariners, fhefhermen, 
watermen, or any ferving man, fhall play at the tables, 
tennis, dice, cards, bowls, flash-couying, logaring, or 
any other unlawful game, out of Chriftmas; on pain of 
twenty foullings; and in Chriftmas to play at the faid 
games only in their mafter's houses, or in their mafter's 
prefence; and alfo no perffon thall at any time play at 
bowls in open places out of his garden or orchard, on 
pain of fix foullings and eightence.
Sect. 18. And where any the forfeitures above-men-
tioned thall be found within the precincts of any behind, 
the owner of the land in which there is fuch a house, 
and the other thall be to him that thall fake in any of the King's courts, and elsewhere they thall be half to the King, and half to him that thall fake in like manner.
Sect. 22. But any manner may licence his fervant to 
play at cards, dice, or tables with himfelf, or with any 
other gentleman openly in his house, or in his presence. Stat. 31 Eliz. c. 5. fot. 7. All men are to be put out upon any fature [that is, any statute then in force] for 
using any unlawful game, fhall be fued and profecuted, 
or otherwise heard and determined, in the general quarter 
feffions or affires of the county where the offence shall 
be committed, or in the leet within which it fhall happen, 
and the place out of the county where the fame.
By Stat. 16 Car. 2. c. 7. fot. 2. it is enacted, "That if any perffon or perffons of any degree or quality what-
soever, at any time or times do or thall, by any fraud, 
fluff, cohefion, circumvention, deceit, or unlawful de-
vil, or all practice whatsoever, in playing at or with 
cards, obtain their gain to him or themselves, to any 
or other persons, any sum or sums of money, or other 
valuable thing or things whatsoever: that then every 
perffon and perffons so offending as afofared, fhall ftip fee 
forfeit
G A M

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 the person or persons involved, or shall forfeit the money or other thing or things so gained; so as every such forfeit and person grieved in that behalf do, or shall prosecute and sue for the same within six calendar months next after such play; and in default of such prosecution, the former moiety thereof to the person or persons involved, or shall forfeit the sum or value of money, or other thing or things so gained, and all and every such plaintiff or plaintiffs, informed against, and shall, in every such suit and prosecution, have and recover his and their treble costs against the person offending and forfeiting as aforesaid.

And sect. 3. 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 pari-mutuel, 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 thereat, and shall lose any sum or sums of money, or other thing or things so played for, exceeding the sum of one hundred pounds, at any one time or meeting, or shall bet on the side or on either side or sides, and shall pay down the same at the time when he or they shall lose the same; the party and parties who lost or shall lose the said moiety, or other thing or things played for, or be played for, above the said sum of one hundred pounds, shall have in that case be bound or compelled, or compellable to pay or make good the same, but the contract or contracts for the said, and for every part thereof, and all and singular judgments, statutes, recognizances, mortgages, conveyances, aurances, bonds, bills, specialties, promises, covenants, agreements, and other acts, deeds and faculties whatsoever, as the said forfeit or it contained, or he, or she, or they, or any of them, or any of them, or his or her or their heirs, devisees and successors, shall be made, or the same be or are, given, acknowledged, or entered into, for security or for security or for the satisfaction of or for the same, 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 sum and sums of money, or other thing or things so won; and shall forfeit, or obtain or acquire above the said sum or sums of one hundred pounds; the one moiety thereof to our said Sovereign Lord the King, his heirs and successors, and the other moiety thereof to such person or persons as shall prosecute or sue for the same within one year next after the time of such play or playing, and by virtue of any of the said debts, bills, plaint or information, in any of his Majesty's courts of record at Westminster, wherein no effion, 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 his treble costs against the person or persons offending and forfeiting as aforesaid.

In the construction of this statute the following opinions have been holden:

1. That if the forfeit or loss be a sum or value of 120 guineas on his banker, who accepts the bill, to an action brought by the winner, this rule will 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 bill of exchange, the drawer has every just cause, and no illegal and notorious winning, to which the plaintiff is privy. 1 Salk. 344. Carth. 356. 5 Mod. 175. 5 C. C.

2. But it terms, that if the winner had assigned this bill or note bona fide, upon good consideration, to a stranger, he had not been within the statute, not being privy to the note, but an honest creditor. 1 Salk. 345. Carth. 357.

3. Also it had been judged, that if a man wins above the sum mentioned in the statute at play, and the winner owes j.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, that is, he promises to pay j. f. S. not privy 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 80l. 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, on B.'s request, bring his horse to run against him for 200l., more which B. never requests, the other 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 construed in the most extensive manner that can be to answer that end. 2 Lev. 94. 1 Vent. 253. 5 C.

6. If A. wins a watch from B. of 10l. value, which is presently delivered, and also 100l. for which a bond is given; this is not within the statute, which extends to those cases where credit is given for any sums lost at play above 100l. without any regard to whom the money may be; and here the watch is in the nature of ready money, and therefore not within the statute. 1 Lev. 244. 1 Sid. 354. 5 C. 1. Salt. 345. 5 C. cited as law by Holt, 276. 529.

7. It hath been adjudged, that if a person loses 60l. to one, and 60l. to another, at one sitting, or if he losses to each of three or four people 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 flits a man, but does not move it from the point, upon which there enures a wager of 100 guineas, viz. whether he who flits 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 is a collateral matter. 1 Salt. 344. 481. 487. 4 Mod. 409. 5 Mold. 1. Comb. 328. Sim. 572. 1 Laun. 487.

Stat. 10 & 11 Will. 9. 5. 17. sect. 1. All lotteries are declared to be public nuisances; and all grants, patents, and licenses for such lotteries are against law.

Stat. 2. No person shall expose to be played, drawn or thrown at, or shall play, draw or throw at any such lottery, either by dice, lots, cards, balls or any other numbers of figures, or any other way whatsoever: And every person who shall expose 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 offender shall likewise be prosecuted as common rogue, according to the statutes in that case made and provided.

Stat. 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 that 9 Ann. cap. 6. sect. 56. All judices of the peace, mayors, constables and other civil officers, shall use their utmost endeavors to prevent the drawing of any such unlawful lottery, by all lawful ways and means; and if such a lottery be set up, or by writing or printing published any such unlawful lotteries, which 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 that 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,
provided, or entered into, or executed by any person or persons whatsoever, either in whole or in part, or the like, to terminate or abate any conveyances or fees whatsoever shall be for any money or other valuable thing whatsoever won by gaming or playing at cards, dice, tables, tenis, bowls, or other games or games whatsoever, or by betting on the risks or hands of such as do game at any of the games aforesaid, or by taking in, or diverting or causing any money, such estate, interest or advanced 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, do play or bet, shall be utterly void, frustrate, and of no effect, to all intents and purposes whatsoever, and that whether such mortgages, securities or other conveyances, shall be of lands, tenements or hereditaments, shall be such as incumber or affect the same, such mortgages, securities or other conveyances, shall enure and be to the use and benefit of, and shall devolve upon such person or persons as should or might have, or be entitled 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 for gaming or playing at cards, dice, or other game or games whatsoever, or by betting on the risks or hands of such as do play, at any of the games aforesaid, lye to any one or more person 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 loosing and playing, 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 costs of suit, by action of debt founded on this act, to be prosecuted in any of her Majesty's courts of record, in which actions or suits, no effusion, protection, waiving of law, custom, or privilege of court, shall be of any importance shall be allowed; in which actions it shall be sufficient for the plaintiff to allege, that the defendant or 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 plaintiffs to the defendant's use, whereby the plaintiff is aggrieved, and 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 truly file, and without covin and collusion file, and with effect prosecute for the money or other thing, to be him or them lost or paid or delivered, as aforesaid, it shall and may be lawful and for any person or persons, by any such action or suit, as aforesaid, to sue for and recover the same, and to have the value thereof, with costs of suit against such winner or winners, as aforesaid; the one monetary thereof to the use of the person or persons that sue for the same, and the other monetary thereof to the use of the finder of the parol, where the offence shall be committed.

Sec. 3. And for the better discovery of the monies, or other thing so won, and to be used 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, to appear before any such bills as shall be preferred against him or them, for discovering the sum and sums of money, or other thing so won at play, as aforesaid.

Sec. 4. Provided, that upon the discovery and repayment of the money, or other thing so to be discovered and recovered as aforesaid, the person or persons, who shall discover and repay the same aforesaid, shall be acquitted, indemnified and discharged from any further punishment, forfeiture or penalty, which he or they might have incurred by the paying for, or winning such money or other things discovered and paid as aforesaid.

Sec. 5. And it is further enacted, That if any person do or shall, by any fraud or false, collusion, convention, deceit or unlawful device or ill practice whatsoever, in playing at or with cards, dice, or any other games aforesaid, or in or by betting a stake or part in the stakes, wagers or adventures, or in or by betting on the risks or hands of such as do game at any of the games aforesaid, shall play as aforesaid, win, obtain, or acquire to him or them sum or sums of money, or other sums of money, or other valuable thing or things whatsoever, or shall at any one time or time and place win of any one or more person or persons whatsoever, above the sum of ten pounds; that then every person or persons so winning, by such ill practice as aforesaid, or winning at any one time or time and place, above the said sum or value of ten pounds, and being convicted of any of the said offences, upon an indictment or information to be exhibited against him or them for that purpose, shall forfeit five times the value of the sum or sums of money, or other thing so won as aforesaid; and, in case of his or their conviction of the same, such person or persons so convicted, shall be deemed infamous, and suffer such corporal punishment as in case of wilful perjury, and such penalty to be recovered by such person or persons as shall sue for the same by such action as aforesaid.

Sec. 6. And whereas divers lead and disseminate persons live at great expenses, having no visible estate, profession or calling to maintain themselves, but support those expenses 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 whatsoever, to cause to come or be brought before them, every person or persons of aforesaid, within whose respective county or liberty, whereby 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 gaming; and if such person or persons shall not make it appear to such justices, that the principal part of his or their expenses is not maintained by gaming, that then such justices shall require of him or them sufficient sureties for his or their good behaviour for the space of twelve months, and in default of his or their finding such sureties, to commit him or them to the common gaol, there to remain until he or they shall find such sureties.

Sec. 7. And it is further enacted, That if such person or persons as aforesaid, shall do or cause any person or persons so to do whatever is for which he or they shall be so bound to the good behaviour, at any one time or time and place, 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 such person or persons so playing or being shall be deemed or taken to be a breach of his or their behaviour, and a forfeiture of the recognizance given for the same.

Sec. 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 affront and beat, or shall challenge or provoke to fight, any other person or persons whatsoever, who shall be in the account of any money won by gaming, playing or betting at any of the games aforesaid, such person or persons affronting and beating, or challenging or provoking to fight, such other person or persons, upon the account aforesaid, shall be being thereof convicted upon an indictment or information obtained against him or them, to pay a fine not exceeding his or her yearly rents, to her Majesty, all his goods, chattels and personal estate whatsoever, and shall also suffer imprisonment without bail or mainprize, in the common gaol of the county where such conviction shall be had, during the term of two years.

Sec. 9. Provided, that nothing in this act shall extend to prevent or hinder any person or persons from gaining 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 resident 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 that any such notice as aforesaid shall, if given, not be in any house, lodging or 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 person or persons, during such time as such freehold and inheritance shall be out of the crown, or such lease to continue, and as such playing be for real and not only.

Upon a case 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, to be delivered out to the indorsee, and 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. 12, s. 1, which states, That where the whole or any part of the consideration is money knowingly lent for gaming, shall be void to all intents and purpoises 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 well considered, that no person can be committed to gaol by the grand jury for endorsing the notes to one, whom they had never seen, and it will be a means to evade the act, it being so very difficult to prove notice on an indorse. And though it be some inconvenience to an innocent man, yet that will not be a balance to thole on the other side. And the plaintiff could not maintain his action, for a breach of the indenture. And it is the common hazard of taking notes of infants or feme covertts. As to what Holf said in Hofter v. Taceh, it was not the point adjudged; and the Chief Justice saith, he had seen a report wherein notice was taken, that all the learned part of the house was of the same opinion. And an action was brought for 15l. won as a wager at a horse-race. And upon a case 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 statutes 9 Ann. c. 12, but are within the general words other game or games. And the court seemed to be of this opinion in Owles v. Cetins, Trin. 6 Ge. 2. though it was never determined. See 1 Fent. 253. The defendant had judgment. Stram. 1159.

The plaintiff and defendant gave together at tossing up by the party being play the note. And the plaintiff having won all the defendant's ready money, lent him ten guineas at the time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was insinfed for the defendant, that by the statute 9 Ann. c. 16, the plaintiff could not maintain an action; for by that act, all notes, bills, bonds, judgments, mortgages, or other securities or conveyances, given, granted, granted, within 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 there was no act within the act, for there is not the word contraclt, as in the statute of usury: and the word securities, as it stands in this act, must mean lafting liens upon the estate. The parliament might think there would be no great harm in a parol contract, where the cred it was not like to run very high; and therefore condemned the act to writen securities; whereas the plaintiff obtained a verdict for 125l. Stram. 1229.

The plaintiff brought his action for 200l. as the lesser 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 winner, 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 defendant is a debtor to the plaintiff. And the clause is to be construed as remedial. And therefore upon consideration, and talking with the other judge, special bail was ordered. Stram. 1070.

R Gen. 1. c. 2. sect. 26. 37. Every person who shall keep any office or place, under the denomination of tiler of houses, lands, advowsons, prefentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money; or shall fell or export to sell the same or any of them, by way of lottery, or by lots, tickets, drawings or figures, in pursuance of any act, or in furtherance of any lottery or scheme; or shall make, print, or publish any lottery or scheme 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 send to the persons advancing such sums, to instil 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 shall be committed, or the offender shall be found, he shall, over and above any penalties by any former act, be 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 distrafs and sale by warrant of such lotteries, and shall also by such justices be levied by distrafs and sale, and shall be a penalty of the same kind as any other fixed or running game in any year, 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 adventurous in, or in any way contribute on the account of lotteries, lotteries, lotteries, schemes, or plans, shall forfeit double the sum contributed, with costs, half to the King, and half to him that shall sue in the courts at Westminster.

Stat. 9 Gen. 1. c. 19. sect. 4, 5. If any person shall, by colour of any grant from any foreign prince or flate, let any lottery or scheme, or make an acting 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 dispone 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 unlawful 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 distrafs 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 shall be paid: Provided that persons aggrieved may appeal to the next quarter-fees.

Stat. 2 Gen. 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 Hen. 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 thenceforth play or act for any such game.

Stat. 6 Gen. 2. c. 35. sect. 29, 30. If any person shall fell, procure or deliver any ticket, receipt, chance or number, in any foreign or pretended foreign lottery, or in any clai, part or division thereof, or in any undertaking in the nature of a lottery; or shall fell, procure or deliver any receipt, chance or number, in any duplici or pretended duplicate of any foreign or pretended foreign lottery; or shall receive any money for any such ticket, ticket, receipt, chance or number, or in consideration of any money to be repaid in case any ticket or number, in any foreign or pretende lottery, or any clai, part or division thereof, shall prove fortunate; and shall be convied thereof in the courts at Westminster, or on the oath of one witnesses 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
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fame (in case of conviction before the justices) to be levied by distrife by warrant of such justices; and shall also be committed to the common gaol for a year, and from thence till the two hundred pounds be paid: Provided that perfon aggrieved may appeal to the next quarter-

fession.

Stat. 12 Geo. 2. c. 28. fall. 1. If any perfon shall each, set up, continue or keep any office or place, under the denomination of a fale of houfe, lands, adowments, pre-
fentations to livings, plate, jewels, fhips, or other things by way of lottery, or by lots, tickets, numbers or figures cast on cards or dice; or shall make, print, advertise or publish proposals or schemes for advancing small fums by severall perfans, amounting in the whole to large sums, to be divided among them by chance or the prizes in fame publick lottery established by act of parliament; or shall deliver out tickets to the perfans advancing fuch fums, to inthiue them to a thafe of the money so advanced, accord-
ing to fuch proposals or schemes; or shall expafe to fale any houfe, lands, adowments, presentations 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 where, 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 fuch justice, or confinement, forfeit two hundred pounds, by di-

frefs and fale, by warrant of one justice of the county; or where the offence fhall be committed; which faid forfeiture (after deducting reasonable charges of the prosecution) fhall go, one third to the informer, and two thirds to the poft of the parish, except in Barth, where the faid two thirds fhall go to the poft of the hos-
pit in the.

Sect. 2. The games of ace of hearts, faro, bafket and hazard, fhall be deemed games or lotteries by cards or dice; and every perfon who fhall set up or keep these games, fhall be liable to all the above mentioned penal-
ties for feiting up or keeping any games or lotteries in this manner.

Sect. 3. And every perfon who fhall play, fet at, flake, or punt at any of the faid games, fhall forfeit fifty pounds in like manner.

Sect. 4. Moreover, every fuch fale of houfe, lands, adowvons, presentations, plate, jewels, fhips, goods or other thongs, or any game of lottery, or other device, depending upon any chance or lot, fhall be void; and the fame being exposed to fale in manner aforefaid, fhall be forfeited to fuch perfon as fhall fucb the fame in any court of record or at the affizes.

Sect. 5. But if any perfon think himfelf aggrieved by any fuch game, or by any justice of the peace, he may ap-

peal to the next feflion, giving reasonable notice to the proctor, and entering into a recognition before fome justice of the peace, where the conviction was made, with two fureties, on condition to try fuch appeal at fuch next feflion; and if the conviction fhall be affirm-

ed, the party appealing fhall pay to the proctor treble costs.

Sect. 6. And no convidion fhall be quaffed by the feflions for want of form, nor fhall be removed by cer-
rivaris, till after determination in the feflions.

Sect. 7. And if the offender fhall not have fufficient goods whereof to levy the penalties, or fhall not im-

mediately pay or give fecurity for the fame; the justice for whom he fhall be convicted may commit him to the common gaol, not exceeding six months.

Sect. 18 Geo. 2. c. 34. fall. 1. No perfon fhall keep any houfe, room or place for playing, or fuffer any per-

fon within fuch place to play at roly-poly, or any other game with cards or dice, already prohibited by the laws of this rehin; and if any perfon fhall keep fuch houfe, or fuffer any perfon to play at roly-poly, or other game with cards or dice, prohibited by law, he fhall be liable to the penalties and procedure as by the act of the 12 G. 2. c. 28.

Sect. 2. And if any perfon fhall play at roly-poly, or any game with cards or dice, prohibited by law, he fhall be liable to the penalties and procedure as by the fame act of the 12 G. 2.

Sect. 4. And if any wretifes fhall neglect or refuse to ap-

pear upon fummone, or fhall refuse to give evidence, or fhall not forth at fuch time as fhall he appointed, by de-

frefs, by warrant of the perfon alleging fuch fummone; and if he have not fufficient goods whereof to levy the fifty pounds, he fhall be committed to the common gaol for fix months.

Sect. 5. No perfon, other than the plaintiff and de-

fendants, fhall be incapacitated from being called to witnefs, touching any offence againft the laws for preventing ef-

cective and deceitful gaming, by reason of having played, betted or flaked at any prohibited game.

Sect. 7. And no privilege of parliament fhall be al-

lowed to any perfon, against whom a percaoncuron fhall be commenced for keeping any roly-poly, or any thong going house or place for playing at any prohibited game.

Sect. 25 Geo. 2. cap. 36. sect. 2. Whereas the mul-

titude of places of entertainment for the lower fent of people is a great caufe of thefts and robberies, as they are thereby tempted to spread their small fuffiance in robus lusts, and in unlawful methods of supplying their wants and renewing their plea-

tures: In order therefore to prevent the faid temptation to thefts and robberes, 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 to the public, it is 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 Wifhinfier, or within twenty miles thereof, without a licence for that purpofe, from the laft prefiding Micbenham quartr-courtiers of the peace, to be held for the county, city, riding, liberty, or division in which fuch houfe, room, garden or other place is fituat (who are hereby authorized and empowered to grant fuch licencee as they in their difcretion fhall think proper) fetigned under the hands and feals of four or more of the justices there assembled, fhall be deemed a disorderly houfe or place; and every fuch licencee hereby fhall be figned and fealed 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 fubfcribing the fame; and no fuch licence fhall be granted at any adjourn-

ment thereof; and that such licencee fhall not be ferue or be taken for any fuch licencee; And it fhall and may be provided, that for any confable or other perfon, being thereunto au-
brized by warrant under the hand and feal of one or more of his Majefy's justices of the peace of the county, city, riding, division or liberty, where fuch houfe or fuch fett, or publick entertainment is kept, or fuch place, and to feize every perfon who fhall be found therein at the time that they may be dealt with according to law: And every perfon keeping fuch houfe, room, garden or other place, without fuch licence as aforefaid, fhall forfeit the fum of one hundred pounds to fuch perfon as fhall fucb the fame for the fame; and be otherwife punifhable as the law dire-

icts in cafes of disorderly houfe.

Sect. 3. Provided, That in order to give notice what places are licensed pursuant to this act, there fhall be aff-

fixed and kept up in some notorious place over the door or entrance of every fuch houfe, room, garden or other place, fignifying the fame, and of the fum of the faid purpofes, and fo licened to be afoeaid, an infcription in large letters, over the words following: vediect, LICENCED PUR-

SUANT TO ACT OF PARLIAMENT OF THE TWENTY-FIFTH OF KING GEORGE THE SECOND; and that no fuch keeper or other perfon of any other place, wherein are played any of the faid purpofes, alfo licenced as aforefaid, fhall 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 infcription as aforefaid, and the faid limitation or restric-
tion in point of time, fhall be infrufed in, and made con-
te to the keeper or other perfon keeping the fame, and in the keeping and affixing and continuing both 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-feffions; and fhall not be renewed; nor fhall any new licence be granted to the
fame person or persons, or any other person on his or
any time hereafter appear, act or behave him or her-
their or any of their behalf, or for their use or benefit,
directly or indirectly, for keeping any bawdy-house, room,
garden or other place, for any of the purposes aforesaid.

Provided, and whereas, by reason of the many subtle
and tricky contrivances of persons keeping 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 punish-
ment; Be it enacted, &c. That any person who shall at
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 persons charged on oath with being guilty of any of the offences punishable by this act, and which 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 proctor, 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 well known to the justice or justices, and he and they shall approve of them; and every such offender and offenders, who shall be bound over to the general quarter-fees of the peace, or goal-delivery of the county, city or town, wherein the offence charged on him shall have been committed, to answer for any such offences punishable by this act, and for the general quarter-fees of the peace, or fessons of oyer and terminer and goal-delivery which shall be held next after him, her or their being apprehended, unless the court shall think fit to put off the trial on just cause made out to them.

Sect. 18. And in all proceedings on this act, any person shall be admitted to be a witness, notwithstanding he being an inhabitant of the place wherein the offence shall have been committed.

Sect. 19. And the justice before whom any person shall be convicted upon this act, shall cause the conviction to be drawn up in the form in the effect following:

To wit,

BE it remembered, that on this day of in the year of his Majesty's reign, A. B. is convicted by me, one of the justices of the peace for the said county of or for the riding or division of the said county of or for the city, liberty, or town of (as the case shall happen to be) for and for the said as to judge him, or her, to pay and forfeit for the fine, the sum of Given under the day and year after said.

The same to be written upon parchment, and transmitted to the next seessions, to be filed amongst the records; and if any person shall appeal to the said seessions, the justices there shall, upon receiving the said conviction, proceed well and truly to consider of the matter, and the execution of the judgment shall in such case be suspended; the person convicted entering into recognizance at the time of the conviction, with two forfeitures in double the sum he shall have been adjudged to pay, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said forfeitures; and the seessions shall award such forfeits as shall appear just and reasonable to be paid by either party; and if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged to be forfeited, together with such forfeits as the court shall award, and 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 by this act to be paid.

Sect. 22. And no person punished by this act, shall be punished by any other law.

2. Action 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 750l. more of B. The question was, whether this was within the statute. The court was divided, which the plaintiff persevering, discontinued his action; but the better opinion was, that it was not within the statute; for if it had been pleased, that the several meetings were positively appointed to choke the statute, it might be otherwise. 2 Mod. 55. Hill. 27 Car. 2. C. B.-%. The plaintiff, A., being at play, and A. owing C. 100l. 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 challenging the whole matter, the court were of opinion upon demurrer, that it was not a case within the statute; and for judgment for the plaintiff. 2 Mod. 278. Hill. 29 Car. 2. C. B. post. n. In debt upon articles for 100l. won at a horse-race, defendant pleaded the covenants, by which it was farther agreed, that the plaintiff, but the request of the defendant, would not run his horse again, at another day and place for 200l. more, and then pleads the statute; the defendant replied, that the defendant did not make such request. But upon demurrer the defendant had judgment. For though the statute allows the losing of a 100l. yet in this case the 100l. was not lost [before] a decision given to run for more. And though there was but 100l. actually lost, yet the contract being [originally] made for more, it was void for the whole ab initio, and can't be made good by the subsequent event. 2 Lev. 94. Hill. 25 Car. 2. B. R. Edgely v. Refin- dale. V. R. 253. C. Edgely v. Hill. 34 Edw. 6. Sect. 2. Where the contract is intrusted to two of the wagers are divided, yet no part of the money is recoverable. 3 Salk. 175. cites Rinfingtan's case. The case of Edgely v. Refindale, cited 5 Mod. 352. in the case of Stanhope v. Smith, is stated to have been upon articles of agreement concerning a horse-match, wherein the defendant agreed to run four heats, at several days for 40l. each heat; and this was held by my Lord Hale to be but one agreement, though to be run at several times, and the defendant in that case had judgment.

Indub. ass. lies not for money won at play, but there ought to be a special declaration; two cases of two of the judges, that peradventure, by special pleading, a good replication may be made. Lutw. 180. Whitgre v. Chancy, S. P. because it wanted consideration; it being but executory. Per Hs. Ch. 1. 5 Mod. 14. in a case of Walker v. Walker. 1 Salk. 23. Hard's case. S. P. 6 Mod. 129. Pojch. 3 Anne, B. R. Smith v. Arty. 1 Salk. 240. Argyll v. H. In which case, the Court of King's Bench said, it was evident the Act 1 Car. 2. 253. 254. 255. was intended to be a public act, and therefore a given by the Court of King's Bench in a case. But it is a peradventure, and the Act has nothing at all to do with any Act of Parliament. A. 3. Hill. 3. 351. 352. But for money flaked on a wager, it lies; being in a third person's hands, the winning the wager determines the property. 2 Show. 82. contra v. Stem. 3 Lev. 176. contra. Egleyton v. Lewis, 2 Vent. 136. v. Colman. A general indemnity in a wager or money won at play: But it must be laid by way of mutual promises specially, and to judgment was reversed. But the chief reason was, because the court would not countenance gaming, by giving to easy a remedy: And though the precedent of Egleyton v. Lewis was thrown in, in which judgment was affirmed in com. fac. yet it would not prevail. Carth. 338. Jacobson v. Colgrave. An express promise will support an action. Per Parker Ch. 10. Mod. 312. Pojch. 1 Gen. B. R.

In an action upon a note for money won at play, defendant pleaded the statute, and set forth, that at one sitting he lost 85l. to the plaintiff, and 40l. more to IV. 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 sitting; but if it be but to several it is not within the stat. 5 Mod. 351. Trin. 8 Eff. 3. B. R. Stanhope v. Smith.
As if A. were 91. to B. and B. refusing to play any longer with him, A. notes 101. to C. at the same fitting, yet this did not deter B. of the money which he lawfully won. 5 Mcb. 352. in the case of Sunbury v. Smith. This perhaps is to be accounted for, as the first debt of the 91. B. may fall out the fraud speciously, and so avoid it. 12 Mcb. 258. in the case of Walker v. Walker. But Brin. 28 Car. 2, B. R. where B. had lost to B. at one fort of game 91. and to C. at another fort of game 50/., and to D. at another fort of game 50/., and in an action of debt on bond brought for one of the sums, defendant pleaded the statute, and that he lost the several sums as above, at the same times; it was declared, to, because it did not appear, that the several winners were parties together, or in trust for another, and the statute only voids debt won, where they are parties or trustees for each other, and not to different gamblers. But it was adjudged for the defendant, the statute being to extend against play. 3 Hid. 671. Hudson v. Main.

In an action for money won at play, the first count was laid properly upon mutual promissory, and the second count was congus etiam ad ludium praedictionis curiat. &c. without a confession; after verdict for the plaintiff, judgment was given. Lord Raym. 1034.

In an action brought for 81. the defendant pleaded that he lost it to the plaintiff at play, and that at the same time he lost 40/. and pleaded the statute of gaming, &c. the plaintiff demurred; and adjudged a good plea since both the sums amounted to more than 101. and were lost at one fitting; contra, if the 40/., had been left by covin, to avoid the payment of the 81. adjudged in C. B. Lord Raym. 452.

The flat of gaming may be pleaded by the acceptor of a bill of exchange payable to the plaintiff who was the winner. Lid. Raym. 87.

The defendant was convicted on an information upon the gaming-stat, which says he shall forfeit five times the value, to be recovered by a common informer, upon present conviction. 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, quod convitus sit; and a new action must be brought upon that judgment for the forfeiture, which was thought sufficient to deter the offenders. Lid. Raym. 77. 12 Eliz. 8. 162. 5 Mcb. 431. Grea. Car. 504. Co. Ext. 362. The defendant was discharged without any fine or costs. Siran. 1048.

For more learning on this subject, see 12 Vin. Abr. tit. Gaming. See Lyttson, Prazin and Camis. See also statutes respecting Gaols, and Gaols, are mentioned in the laws of King Athlon. See Vagia-

tion.Author.

Gaol. (Gaula, Fr. geol, i.e. cavesa, a cage for birds.) It is used metaphorically for a prison. Crowd.

1. By what authority gaols are erected, to whom they belong, and who are to be at the charge of repairing them.
2. To what 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.

By what authority gaols are erected, to whom they belong, and who are to be at the charge of repairing them.

Gaols are of such universal concern to the publick, that none can be erected by any seif authority than an act of parliament. 2 Hid. 705. Hence the coroner is to inquire of the death of all perons whatsoever who die in prison, to the end that the publick may be satisfied, that in another such occasion, to the great end by the common course of nature, or by some unlawful violence, or unreasonable hardships, put on them by thee under whose power they were confined. 3 Hid. 529. 49.

Voc. H. IV. 95.

Also all prisons and gaols belong to the King, situate in a subject may have the custody or keeping of them. 2 Hid. 529.

And in this purpose, by the 5 H. 4. cap. 10, reciting, "That divers confables of cafes within the realm, being aligned justices of the peace by the King's commission, had by colour of such commission used to take people, to whom they bore evil will, and imprisoned them within the said cellars till they have made fine and at the same fine and at the same, and in an action of debt or debt brought for one of the sums, defendant pleaded the statute, and that he lost the several sums as above, at the same times; it was declared to, because it did not appear, that the several winners were parties together, or in trust for another, and the statute only voids debt won, where they are parties or trustees for each other, and not to different gamblers. But it was adjudged for the defendant, the statute being to extend against play. 3 Hid. 671. Hudson v. Main.

In an action for money won at play, the first count was laid properly upon mutual promissory, and the second count was congus etiam ad ludium praedictionis curiat. &c. without a confession; after verdict for the plaintiff, judgment was given. Lord Raym. 1034.

In an action brought for 81. the defendant pleaded that he lost it to the plaintiff at play, and that at the same time he lost 40/. and pleaded the statute of gaming, &c. the plaintiff demurred; and adjudged a good plea since both the sums amounted to more than 101. and were lost at one fitting; contra, if the 40/., had been left by covin, to avoid the payment of the 81. adjudged in C. B. Lord Raym. 452.

The flat of gaming may be pleaded by the acceptor of a bill of exchange payable to the plaintiff who was the winner. Lid. Raym. 87.

The defendant was convicted on an information upon the gaming-stat, which says he shall forfeit five times the value, to be recovered by a common informer, upon present conviction. 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, quod convitus sit; and a new action must be brought upon that judgment for the forfeiture, which was thought sufficient to deter the offenders. Lid. Raym. 77. 12 Eliz. 8. 162. 5 Mcb. 431. Grea. Car. 504. Co. Ext. 362. The defendant was discharged without any fine or costs. Siran. 1048.

For more learning on this subject, see 12 Vin. Abr. tit. Gaming. See Lyttson, Prazin and Camis. See also statutes respecting Gaols, and Gaols, are mentioned in the laws of King Athlon. See Vagia-

tion.Author.

Gaol. (Gaula, Fr. geol, i.e. cavesa, a cage for birds.) It is used metaphorically for a prison. Crowd.

1. By what authority gaols are erected, to whom they belong, and who are to be at the charge of repairing them.
2. To what 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.

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Gaols are of such universal concern to the publick, that none can be erected by any seif authority than an act of parliament. 2 Hid. 705. Hence the coroner is to inquire of the death of all perons whatsoever who die in prison, to the end that the publick may be satisfied, that in another such occasion, to the great end by the common course of nature, or by some unlawful violence, or unreasonable hardships, put on them by thee under whose power they were confined. 3 Hid. 529. 49.

Voc. H. IV. 95.
Provided, 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 affile or gaol-delivery of such felons, for any affilement, to the making the common gaol or gaols of the respective thire or county.

And it is further enacted by the said statute, sect. 6, "That every person or persons of or belonging to the county of this realm, or the dominions of (or, 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, sold, let, granted or given by the public 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, "That none shall be imprisoned by any justice of the peace, but only in the common gaol, faring to Lords and others, who shall have given the same, and that the act is only declaratory at the Common law, 2 Jult. 23.

But the court of King's Bench may commit any prisoner to the county 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; but

But by the 31 Car. 2. cap. 2, sect. 12, it is enacted, "That no subject of this realm, being an inhabitant or resident of this kingdom of England, domain 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 were, or at any time hereafter shall 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 such subject so imprisoned shall have an action of false imprisonment, &c. and recover treble costs, and no other damage; and that before he shall be committed to the person making such warrant, who shall incur a praemunire.

And as prisoners ought to be committed at first to the proper prison, to ought they not 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, "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 culpable 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 a habeas corpus, or some other legal writ; or where the prisoner is the subject of the prison, from the county, to another county within the same county, in order to a trial or discharge by due course of law; or in case of sudden fire or infecction, 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 wronged a hundred pounds for the first offense, two hundred pounds for the second, &c. See 19 Car. 2. cap. 4, for impounding justices of the peace to remove prisoners in case of infecction.

By statutes 1 & 2 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.
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 direction of the said justice or justices of the peace, shall certify and pay the charges of such a commission or finding to the said goods; and the apportionment of such a commission shall be paid by the parish or parishes, where such goods or chattels shall remain and be, and the overplus of the money which shall be made thereof to be delivered to the party to whom the said goods shall belong.

And it is further enacted, sec. 2. That if the said persons shall not have any goods or chattels, which may be sold for the purposes aforesaid, within the county or liberty, an insufficient affidavit shall be made by the constables and churchwardens, and two or three other the honest inhabitants of the parish or parishes where such goods shall be taken or apprehended, that the said taxation being allowed under the hand of one or more justice or justices of the peace, if there be such constables or churchwardens there inhabiting, and in default of them, by four of the principal inhabitants of the said parish, township or parish, where such offenders shall be taken or apprehended, that the said taxation shall be made out of the county or liberty, and that the punishment of such persons shall be four times and a half such a tax or taxes as shall be laid upon the said goods, or as shall be the damages remaining to the person who shall pay the said taxes or damages; and if the said persons shall not be made prisoners, or any justice of peace near adjoining, shall and may give warrant as aforesaid, to the constable, tithingman or other officer, there to disfrain the goods of any for any reason and cause, for which the said person shall not be made prisoner, and if such person or persons be not so authorized shall have full power to disfain, and by appraisement of four substantial inhabitants of the said place, to sell a sufficient quantity of the goods and chattels of the said person for selling, for the levying of the said taxation; and if any exempt of the money come by the sale thereof, the same to be delivered to the owner.

By sec. 27 Geo. 2. c. 3. the expense of conveying poor offenders to goal or the house of correction, shall be paid by the treasurer of the county, except in Abridges.

By some opinions, a gaoler is compellable to find his prisoner sufl lenance; but as this is denied by others, and as there are several statutes which provide for the maintainence of prisoners, without supposing the gaoler any way obliged to it, it feems this opinion is not maintainable, Ca. 37. Sec. Li. 325 a. where Lord Coke says, 'that in the old times, they made the prisoner himself, or his widows, the defendant shall not waste his haw, for he cannot refuse the prisoner, and ought not to suffer him to die for default of sustenance; otherwise it is for tubbing a man at large.'

By the 14 Eliz. cap. 5. sec. 57. it is enacted, 'that it is the duty of the justices of peace of every thire within this realm, at their general quarter-sessions of the peace to hold 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 discretion, so that the said taxation and rate do not exceed above 6 d. or 6 s. by the week out of every parish; and that the churchwardens of every parish within this realm, for the time being shall every Sunday levy the same, and once every quarter of a year pay the said money to the said by the said churchwardens, at every general quarter-sessions to be holden within the said thires, to such sufficient persons dwelling within the said thires, as shall be appointed by the said justices in their said open quarter-sessions, to be there ready to receive the said money, and to be paid to the said prisoners; 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
4. Of the offence of breaking prison.

The offence of breaking a goal or prison, by the Common law, was no less than felony; and this whether the party were committed in a criminal or civil case, or whether he was actually within the walls of the prison, or only in the custody of any person who had lawfully arrested him, or whether he was in the King's prison, or one belonging to a lord of transeffe. 2 Rol. 589. Stamd. P. C. 31. Crs. Cor. 210.

But now by the statute 1 Ed. 2. 2. the severity of the law is relaxed, and the breaking of prison is only felony, as 2 Rol. 589. 2 id. 2. 5. 2. Concerning prisoners who break prison, our Lord the King willith and commandeth, that none from henceforth that breaketh prison shall have judgment of life or member for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, which is according to the law and custom of the realm; albeit in times past it hath been used otherwise.

In the construction of this statute, the following opinions have been held:

That any place whatever, wherein a person under a lawful arrest or committed for capital offences is restrained from his liberty, whether in the rocks or street, or in the common gaol, or the house of a confidable or private person, or the prison of the ordinary, is a prison within the statute. 2 Rol. 589. Dyer 99. pl. 60. Crom. 38. Crs. Cor. 210. Hale's P. C. 107.

That if the party who breaks from prison were taken on a warrant 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 commission lawful, be he ever so innocent. 2 Rol. 590. Hale's P. C. 109.

Also if an innocent person be committed by a lawful mittimus on such suspicion 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. 2 Rol. 590. Dyer 99. pl. 60. Crom. 38. 2.

But if no felony at all were done, and the party be neither indicted or appealed, no mittimus for such a supposed crime will make him guilty within the statute by breaking the prison, for that his imprisonment was unjustifiable. Hale's P. C. 109. 2 Rol. 590. cont. 2 Lew. 106.

Also if a felony were done, yet if there were no just cause of suspicion 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 lawful term of imprisonment, in such case, depends wholly on the mittimus, which, if it be not according to law, the imprisonment will have nothing to support it. 2 Rol. 591. H. P. 109. but for this see Mil. 28. 2 Hauk. P. C. 1245.

That there must be an actual breaking, for the words felony from prison, are necessary in every indictment for this offence, cannot be satisfied without some actual force or violence; and therefore if the prisoner, without the use 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 the breach made by others without his privy, he is guilty of a misdemeanour only, and not of felony. 2 Rol. 599. Hale's P. C. 108. Stamd. 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, be broken out to live his life, come within the statute. Pol. 256. 2 Rol. 590. Hale's P. C. 108.

Nor is it felony to break a prison, unless the prisoner escape. Kett. 87. 2. 2. 2.

That the imprisonment be for any offence made capital by the 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 becomes felony by a matter subsequent, as where one committed for having carelessly wound a man, who afterwards dies, breaks the prison before he dies, the fiction of law, which to many purposes makes the offence a felony ab initio, shall not be carried any farther to make the prisoner-breach also a felony, which at the time when it was committed was but a misdemeanour. Hale's P. C. 128. 2 Rol. 591.

Also 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 mitimus, 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 mitimus 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 lessened nor increased by a mistake in the mitimus. But for this see 2 Hauk. P. C. 129.

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 fell within the meaning of the words. 2 Hauk. 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 Hauk. 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 Hauk. P. C. 127—8.

That 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 Rol. 591. See $$$, Marbif. 255.

Gaoler, Is the master or keeper of a gaol or prison. 2. The duty and power of gaolers and keepers of prisons. 3. 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 so far under the protection of the law, that if a perfon threatens him for keeping a prisoner in safe custody, he may be indicted and fined, and imprisoned for it. 2 Rol. 76.

If a criminal endeavouring to break the gaoler, shall be lawfully killed by him in the affray. Jerk. 23. 2 Hauk. P. C. 71.

Besides the duties imposed on gaolers by act of parliament, and the abuses for which by statute they are punished, it is supposed by them to be part of their duties, and as part of imprisonment, as also to the forfeiture of their offices, for gross and palpable abuses in the execution of their offices, such as refusing prisoners to escape, barbarously maddening them, see 9 Co. 50. Raym. 216. 2 Rol. 38. 3 Cs. 44.

By the 1 Ed. 3. cap. 10. "If any keeper of a prison or under-keeper, by too great durs of imprisonment, and by pain, make any prisoner that he hath in 1
his ward to become an appellee against his will, he is guilty of felony.

In the application of this statute it is said to be no way material, whether the approbement be true or false, or whether the appellee be acquitted or condemned; but at law this offence was esteemed a misprision only, unless the appellee were hanged by reason of the appeal. Staun. P. C. 35. 3 hif. 97.

Upon a great number of cases, and evidence, the courts to which they more immediately belong, for any griefs inbehaviour in their offices, or contempt of the rules of such courts, and punishable by any other courts for disobeying: writings of habets corpus awarded by such courts, and not brought up at the day of trial by such writs. 2 Hened. P. C. 151, and vide tit. Habets Corpus.

By the 4 Ed. 3. cap. 10. recting, That whereas in times past, sheriffs and gaolers of gaols would not receive theives, pervert appealed, indicted or found with the manner, taken and attainted by the constables and townships, the said taking great fines and ransoms of them for their receipt, whereby the said constables and townships have been unwilling to take thieves and felons because of such extreme charges, and the thieves and felons more encouraged to offend, it is enacted, That the several and different fines found of them, by the delivery of the constables and townships, without taking any thing for the receipt; and the judges to deliver the gaol, shall have power to hear their complaints, that with complaint against the sheriffs and gaolers in such case, and shall be heard by the several judges and gaolers, if they shall be found guilty. By the 23 H. 6. cap. 10, a gaoler upon commitment may take 6d.

By the 3 H. 7. cap. 3. it is enacted, That every sherfiff, bailiff of franchise, and every other person having authority or power of keeping of gaols, or of prisoners for felony, duely appointed to the same, and upon no guilty pleaded, she was found guilty and her crime extortion of fees, and hard usage of the prisoners in a most barbarous manner; and after the said by her counsel moved in arrest of judgment, and could not prevail, the said judgment given against her, the said was fined 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 same. Rayn. 216. 2 Lev. 71. Lady Braghten's case.

And by the 8 & 9 Will. 3. cap. 27, it is enacted, That if any marshal of the King's Bench prison, and warden of the Fleet, shall be executed by the several persons to whom the inheritance of the prison, prison-houses, birds, tenements and other hereditaments then belonging or uncertain respectively, in his or their respective proper person or persons, or by his or their sufficient deputy or deputies, for such or any other prison within the kingdom, shall take any sum of money, reward or gratuity whatsoever, or security for the same, to procure, admit, receive or entiate any such or any other prison, the said marshal of the King's Bench prison, and warden of the Fleet, and his respective deputies or underkeepers or any other keeper of any prisons as aforesaid, shall for every such office 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 lost a particular interest, as of him who hath custody of a gaol for life or years, does not affect him in remainder or erection who hath the inheritance, but that upon such forfeiture his title shall accrue, and not go to the King. P. P. 371. 2 Lev. 71. Rayn. 216. 3 Lev. 288.

But by the 8 & 9 Will. 3. cap. 27, it is enacted, That the offices of marshal of the King's Bench prison, and warden of the Fleet, shall be executed by the several persons to whom the inheritance of the prison, prison-houses, birds, tenements and other hereditaments then belonging or uncertain respectively, in his or their respective proper person or persons, or by his or their sufficient deputy or deputies, for such or any other prison, and for all forgeries, efts and other misdemeanor in their respective offices, by such deputy or deputies permitted, or committed, the said person or persons, in whom the aforesaid inheritance respectively are or shall then be, shall be answerable; and the profits and aforesaid inheritances of the said several offices shall be quitted, seised or extended to make satisfaction for such forgeries, esfts or misdemeanor respectively, as permitted, suffered or committed by the person or persons themselves, or either of them in whom the respective inheritances of the said prisons shall then be.

See title Prison, Esqtie.

Gaol-delivery. See Juticies of gaol-delivery.

Gara, A measure or small quantity of ground; one farthing part of a fen. See in practice Berford for acres and short gars, 6 l. Mag. angl. tom. 3. par. 2. pag. 29.

Garde, (Garba, from the Fr. garbe, a flock) Signifies a bundle or sheaf of corn. Carta de Forfia, cap. 7. And garde jigituram is a sheaf of straws, containing twenty-four, otherwise called niofis jigituram. Stark, Garda, De omni omnino decime garba Des debita g. Ll. Edwards Conf. cap. 17. It is understood for all manner of corn and grain that is usually bound in sheafs, as decime garbarum. Garba is also taken for a handful, viz. Garba acuis fit ex triginta peciis. Fleta, lib. 2. c. 12. Cowell, edit. 1727.
Garritts, in Stat. 21 Jac. 1. cap. 10. grinds the dust, full or uncleanliness that is ferred from spice, drugs, &c.

Carling of botanizers, in Stat. 2 R. 3. cap. 11. Is the cutting or cutting out the good from the bad. As garlic is spice nothing but to purify it from the dross, and that is done by cutting, or cutting out the bad from the good. From the Italian garbi, that a silence, neutrally: Thence probably we for when we see a man in such habit. He is in a kindred garb. Coddell, edit. 1727.

Garber of fitters, (mentioned in Stat. 21 Jac. cap. 19.) is an officer of great antiquity in the city of London, who may enter into any house, watchcloth, &c. to ward burning and touch drugs, spices, &c. and to garble the name, and make them clean.

Garritts, The word piskey is printed by mistake for farce; however it is Sigilus. the baggage of an army. — Cam certum nigret elegentiat flanationi caput aurognium specie (qvec garcinus argyropus) A tersus locutus. Waltham in R. 2. pag. 224. Coddell, edit. 1727.

Garrius, (Fr. garcon.) A boy, a stripling, a groom. Plq. Ca. 21 Ed. 1. Garter filde, groom of the robe to the King. Coddell, edit. 1727.

Garrits and Garritts, The baggage of an army, so called. A Guttarii, or five miliarum: Waltham, pag. 242. For garciones are those servants which follow the camp. Habet garciones seu farcitiis superanne. Incipillus, pag. 886.

Garb, Carth. See Guard and Guardian.

Garritdash, (Fr. garderobes.) A vessel for armament. In the n. 5. by charter dated 16 Juni. 7 Regni granted to Sir William Bourchier, comitem earum de Eves in Normandy. — Reddendo dicti Regis & Ferdinandi suis apud coritum Rathamagi sumus gardebrach de jiffiam Sanclis Gergii finguis annis, &c. Baronag. Anglia, 2 part. 4.

Gartherobe, (Garderobes.) A closet or small apartment for hanging up clothes, being the same with wardrobe. See 2 Inst. 255.

Garrit or Guardia, Is a word used among the scalfists for the Lat. cothelis & guardianus. See guardon, dictur ille, et cuffiaura summi off. Lib. Feod. 1. tit. 2 & 11.

Carth. See Guardian.

Car, is a coarse wool full of hair, such as grow about the flanks of sheep. Stat. 31 Ed. 3. c. 8.

Sargarrete, To speak with a loud voice: Sit hae verbis dominis Parvis unius, gargante supra fixa. — Cam certum, or being in the 14. Ed. Matr. anno 1522.


Carisius Hircus. The river Yare in Norfolk. H.

Garishill, but more truly Garishphill, Is that sort of spice we call clove. Camden, edit. 1727.

Garland, A chaplet, a coronet, a garland. — Car- tarii, or the heralds garland. Canitera dictum reprimand. Mat. Par. anno. 1247.

Garniture. Garniture, furnishing, possession, ammunition, and other implements of war. Mat. Par. fab. ann. 1250.

Garniturenum, Garnish, trimming, or any thing adorning clothes or wearing apparel. Min. Arg. tom. 2. p. 321.

Garish, As to garish the heir, that is, to warn the heir. 2 Eliz. c. 3.

Garnish, Is taken for the party in whose hands money is attached, within the liberties of the city of London, to used in the Ward 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. Coddell, edit. 1727. See Antidation.

Garnishment, (from 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 cause and court: for example, One is sued for the de- tinue of certain evidences and charters, and faith, that the evidences were delivered to him not only by the plaintiff, but another ali, and therefore prayeth, that that other may be required to plead with the plaintiff, whether the conditions be performed or not; and in the petition

Garth, he is bid to pray garnishment. New Stat. of England, fol. 312. cl. 4. and Termi de la Ley, Grahn, f. 191. which may be interpreted either warning of that other, or else furnishing of the court with parties sufficient throughout to determine the cause, because until he appears and join, the defendant is, as it were, out of the court, and if no other party be joyned he cannot be sided of all parties to the action. With this agrees Britton, cap. 29, where he relates, That contracts, some be naked, and some furnish'd, and (to use the literal figurative of the word) appurtenance, but a naked con- tract, nondum patronum, gives no action; and therefore it is nothing but the former, and the latter cannot be appurtenance, which ought to be with these five sorts of garnishments. Howbeit it is generally used for a warning in many places, particularly in Kitchin, fol. 6. Garnigler le courte, is to warn the court; and reasonable garnishment in the former place intends reasonable warning, and again, fol. 283, and many other authors. And in the flante, cap. 2. Upon a garnishment, or two nickles returned. But this may well be thought a metonymy of the effect, because by the warning of parties, the court is furnished and adorned. Coddell, edit. 1727.

Gariture, (Garrijura.) A furnishing or providing. Camden, edit. 1727.

Garrienna, A warren. Coddell, edit. 1727.

Garritummum, A fine or amerciament. See Domes- day; its written in Spendam, Giffs. Geffana. See Cer- tianum.

Garrit, (Gartarium, in French jurist, i. perifels, for sporitaria) Signifies in divers statutes 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 ap- peared by Mr. Camden, 211, and many others, was first instituted by King Edward the Third, in the 29 year of his reign, upon good sucesss in a furbish, wherein the King's garter (as it is said) was used for a token. 'Tis true, Fuldaire Virg. gives it a more light original, but his grounds, by his own confinition, arise from the vulgar opinion; King Edward the Third (fays he) after he had obtained many great victories; (the Kings of France and Scotland being both prisoners in the Tower of London at one time; King Henry of Castile the bald, expell'd, and Don Pedro restored by the Prince of Wales,) did, upon no weighty occasion, first erect this order in 1520. vide. He dancing with the Queen, and other ladies of the court, took up a garter that happened to fall from one of them, which he could not help picking up; and thinking it was meet (which is commonly thought truth) he caught it up, and made that garter to be of high reputation, and shortly after instituted this order of the Blue Garters, which every companion of the order is bound daily to wear, being richly decorated with gold and silver, and having their words fixt on it, Hoc est quod regem post mortem, which is commonly intepreted, Gwill him that evil thinketh; or rather thus, To be him that evil thinketh. Erne in his Glory of Ge- neraliy, fol. 120. agrees with Camden, and more partic- ularly fer down the victories by which this order was occasioned. See very ingenious and elaborate Tastive on this Subject by Elias Afmine, 1549. This order con- fifts of twenty-six martal and heroic nobles, wherein 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 honer being to great, that Empires of other Kings of nations have defined, and thankfully accepted it. For the ceremonies of the chapter proceeding to the election, of the investiture and robes, introductions and vow, with all other matters con- cerning it, see Mr. Segar's Honour Military and Civil, 2. cap. 9. f. 65. and the said Testive by Mr. Afmine, 1549. 65. and the very true and principal garter of arms among our order, is strange, that in his English heralds, created by King Henry the Third, there are two pages, pag. 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 gar-thar. Coddell, edit. 1727.

Garthman,
GAV

Gavellere, Gavelth, The duty or work of ploughing
so much earth, or ground, done by the customary
tenant for his lord. — Item respectus de 35 acris de
confinantia arundis, gavel-her. — Item homini ibi quinque
juros, gavelis, quod simul damnum ad fermenatum, & feminisco, & hereditum, et laborant quod quid gavel-her.
Summer of Gavelkind, p. 17.

Gavelled, Corn, rent, or provision of bread, re-
ferred from the tenant to be paid in kind. Allcator
Pres sumus pro gavelled ex berentae tres summas & de-
mund. — In Gavelled, de conjectuante armatum &
metentum duo laudam. — S. Kitchin, Gavelkind, pg. 25.

Gavelgbna, Gavelguld, That yields rent or annual
profit. — Si antem in gavelgibna, id eft, in gallum red-
dente dama popes fta, vel in galebras 30 sol, capta judici-
Anglo. leg. p. 155.

Gavelkind, Is by Mr. Lumbard, in his Exposition of
Saxon Words, verbo Terra de Scriptis, composed of three
Saxon words, gys, cau, nom, signifies any distance or
length. But physic in his Reformation of decayed Intelli-
gence, c. 3. calls gavelkind, quod simul damnum, quod
gavel-her, that is, give to each child his part. But Taylor in his His-
tory of Gavelkind, would derive it from the British gevel, a
hold, or tenure, and comes of cemhald, generatio out familia, and
so gavel-cemhald might signify Tenura generationis, pag. 92 & 123.
Whatsoever is the true etymology, it signifies in law a custom, whereby the land of the
father is equally divided at his death among all his sons, so that 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.

Tentniciis præcis patris succedit in agris
Moscula ferri omnis, ne faret utilia potens.

This custom is still in force in divers places of
England, but especially in Kent, Suffolksted in Heretoffshire,
and elsewhere, more with some difference; but the
statute of 33 H. 8. c. 26. all Gavel-kind lands in Wales
are made defendable to the heirs, according to the
courts of the Common law. Camden, in his Britannia, pg.
239, faith in express words, Cantuani eo legi Gulielmo
Nomannio de dictandum, ut patrias conjectuantes illegales
retirent, et en uma specie Gavel-e Kurds, & Gavel-kind
omnibus. Haec terrae ut omnia conjectur, littera et
seminabit, vel seminavis si no futuris, adding withal worth the noting, viz. Hanc haroeditatis
cum quantum denocam omnia agerat, audient, & fine
dominis confiderit, cantuati vel lands vel wendenals, alienus licet.
Hanc fit lipsius, qui fuerit damnum, de
landis, &c. It appears by 18 Hen. 6. c. 3. that in those days
they were not above thirty or forty perkins in Kent that held
by any other tenure, but it was altered afterwards in
much land in that county, upon the petition of several
gentlemen there, a statute made 33 H. 8. cap. 3.
In Gavel-kind, though the father be hanged, the
son shall inherit; for their custom is, The father to the
bough, the son to the plough. Doctor and Student, cap.
10. On Litt. lib. 2. cap. 10. sect. 165. and Co. 9
Reg. Stellis, c. 3. Their ancestors held their lands by
writing, or in rent; which were held by writing were
called buckland, whole owners were men who, to this day,
we now call freeholders. That which was held without
writing was called folcled, and the owners were of fervile
condition, and were poecified ad voluntatem Domini,
but the inheritance of freehold did not in those days
depend to the actual tenure, but to all alike, which in Saxen
was called lands jeullan, and it was as good to have
from whence came the custom of Gavel-kind. And the
reason why it was retained in Kent, and no where else,
is, because the Kentishmen were not conquered by the
Normans: For Sigmond, the archbishop of Canterbury,
and one Egbert, an Freeman, commanded the forces in
that county, ordered every man to march with his
men, and from whence came the custom of Gavel-kind.
And the reason why it was retained in Kent, and no
where else, is, because the Kentishmen were not conquered by
the Normans: For Sigmond, the archbishop of Canterbury,
defence of the laws of their country; and he imagining himself to be encompassed in a wood, granted that
and their poverty should enjoy their rights, liberties and
laws; some of which, as particularly this of Gavel-kind,
continues to this very day. Gavel, ed. 1777.
Of the same 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 tenure is reckoned by
the bell antiquaries to be the same with the Saxon feud
lands, which was even afterwards called after the feudal
services. 2 Bat. Abr. 657. Sumner 12, 351 37.
How this property came to escape, and to remain
intire down to the people of Kent from their Saxon
ancestors, is not agreed among the several antiquaies; 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 tale, 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 fealties; probably, not
written in the story as to the expedition of the
Conqueror with arms, it might thus far be true,
that they came with their boughs to submit them
telves to him on his first entry, and might petition for
the establishment of their rights and customs: and the Con
queror, who was a very politic prince, might, to gain
reputation with his new people, so as this influence of his
clemency; 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 Romanick part of the story might
be invented by Spet, to aggrandize his own monarchical.
kind 137, 171. Sumner 12.
1. Several properties of this custom.
2. Particular cases which have been adjudged relating to
this custom.
1. 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
feeventh part, which was the custom of the matrimon
ial, in nature of the contract in the Roman law, and
without any feudal words or reservation of tenure. 2
Bat. Abr. 638. Sumner 88.
The next property is, that these lands are not forfei
table 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 crimes lesven majestatis; and therefore the clergy,
that were judges with the eal, never allowed the lands
to be forfeited but for the crime of high treason; but
subsequent flatures comprehend Gavel-kind, because such
laws extend on 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 tho'
the stiffnecks in which the custom is to be taken, because
derogatory from the Common law, is usually given for a
reason that this custom be not the true feudal
law, that outlawry and abjuring the realm are punishments in
troduced 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.
When any tenant dies without 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 con
tinued; but the custom is not used even in Kent to this
day, because there it is supposed these lords in giving tutors do it at their own peril in the account, and therefore every judgment is ar
erent to intermeddle. Lamb. 611, 612, 624, 626.
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 age of puberty; for they
reckoned, that though the infant had ended his years of
infancy, 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 com pletely
out of guardianship. Lamb. 612.
The guardian appointed by the lord is to have the
name allowance, and no other, with the guardian in office
at Common law, and is subject to the account of the
heir for his receipts, and to the dollars of the lord for the
name cause. Lamb. 625.
The liberty of selling was allowed at the age of fifteen
for the convenience and necessity of commerce, for
which the small divided fines were absolutely necessary; yet it
was decided that the conditions of such sales should be,
that the infant could not be wronged or impugned a
fore an infant that falls must have a valuable consideration,
because otherwise 'tis a plain sign that the infant was de
frauded; if a woman sold at the age of fifteen gavelkin
marriage privileges, this was a good conveyance; for
marriage was reckoned to be a good and sufficient confide
rance, and therefore need not be confirmed by an act of
date. 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 con
duction does not get admitted to make it derogate, for
all customs are to be confirmed clearly. Lamb. 628.
This custom, like all others that are derogatory from the
Common law, is to be continued 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 further than by notorious facts may appear,
therefore in this case, if an infant in gavelkind be dispelled,
and releas to his dispossessor, or releas to a discontinuance,
it is not within the custom, and therefore void; so if he
make a feoffment with warranty, the warranty is not
complemented within the custom, and to void; for the
custom is not acted upon it, and is a conveyance by a naked
feoffment. 1 Rot. 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 compared, and therefore the
greater need of more than ordinary direction in such case,
which is not found in lands; besides, a reversion or
remainder could not be immemorial; and therefore the
custom could not be thereunto appendant, because the
immemorial customs only were confirmed by the Con
queror; so that since the Norman conquest such a lase
can't be adjudged legal. Bridw. 33. pt. 52. Lamb.
627.
When the infant is not to be land coming by decessor, and not by pur
chase, because the infant's purchase could not be a subjed
matter for the custom; for the Conqueror must, as is said,
be preumed to confirm nothing but a privilege that is
immemorial; therefore it must be governed by the general
627. It must be lands in possession, because the infant
had the privileges of the infant at Common law, because tho' he
had the privilege of alienation at fifteen, yet that
did not take from him any privilege he had before at the
Common law. 1 Rot. Abr. 144.
As to the geld, or allodial rent, that was referred upon
the lands, the lord might demand, how the geld was
vigor for his rent as when the tenant held it in medium
benefit 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 per

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 infeft-call by implication, by that part of the will, that if any of them died without issue, the others and like the word heir makes a fee-simple in that part that descends to the survivor, upon the death of the rest without issue. 

An man feited of land in gavelkind makes a feifment to the wife of himself and his wife in tail, the remainder to his right heirs; the word heis in the remainder is of limitation, and not of purchase; and therefore the remainder shall descend according to the custom of gavelkind. 

Bro. vit. Cust. lam., (1.)

Lands in Kent were disavowed (by s 2 H. 8. cap. 3, and a private act made 2 & 3 Ed. 6.) to all intents, construct; and purposes whatever, that they should descend as lands at Common law, any cufrom to the contrary notwithstanding; and the quesoion was, whether these lands loft by these uattudes all their other qualities or cufroms belonging to gavelkind, as well as their partibility; and resolved that they lose only their partibility; 

Lambs, 10. 2 Kib. 288. Hard. 375.

For this act were made at the petition of those gentlemen whose lands were disavowed, to prevent the extircation of their families by the frequent divisions of those lands; therefore 'tis to be presumed, that the legitimate owners would be entitled to the remainder partibility, as that part of the cufrom which tended to the crumbling of families, and not those other beneficial cufroms annexed to such lands in Kent, such as devifing, forfeiture for treason only, 

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 purposes,) I would take away all manner of power of devifing those lands, for lands at Common law were not devidible; and this act being subseqent to s 2 H. 8. and s 3 H. 8. of wills, must repeal them, and consequently prevent all future devies; but this restraint can't be intended to be within the view of the pettiiters, nor of the legislature that framed the act upon the petition.

3. That in the beginning of the clauze the words to all intents and purposes, &c. are large, yet they are restrained by the last words of the clauze, viz. that they should devid as lands at Common law, and consequently the cuftom of partibility is as good and as well established by law, as it is by common usages, and other qualities annexed to the partible land in Kent, be benefical to gavelkind; for the cuftom 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 devid; and if this doubt may be admitted, then those extraordinary cufroms in Kent can't be extinguisht in a statute, without particular words for that purpose. 

S. ibd. 137. Rraym. 59, 77.

To illustrate this point further, it will be necessary to take notice of the words afofo, if a man feited in lands in gavelkind give or devise them to a man and his elder heirs, this does not alter the cuftomary inheritance, or hinder the devisers, according to the rules in gavelkind, for that can be only done by act of parliament. 

Cic. Lit. 27. a.

If a man feited in lands in gavelkind give or devise them to a man and his elder heirs, this does not alter the cuftomary inheritance, or hinder the devisers, according to the rules in gavelkind, for that can be only done by act of parliament.

Cic. Lit. 27. a.

If lands in gavelkind devid the King and his brother, the King shall take one moiety, and his brother the other; but if the King dies, his moiety shall devid the King; and not according to the rules of devid in gavelkind; for the King was feited of his moiety pure corone; therefore it shall attend the crown, and consequently go to the elder son.

Psic. 205. Cic. Lit. 15.
dom, that the judge may be apprised of them, and where they obtain, and to give their decisions with regard to them. 1 Sid. 138. Cro. Car. 562. 2 Sid. 153. Bruse v. Brodey. Lamb. 595.

Heirs in gavelkind shall make partition as parceners, and a writ of partition lies between them as it does be- tween certain lessees, to the declaration among the parties what is the custom must be mentioned; as to say, that the land is of the custom of gavelkind, but they need not pre- serve; for the custom, as different from the general law of the kingdom, must be taken notice of to the judge, yet there is no necessity for prebischiving, because it is lic. in Chit. 17 b. Lit. felt. 285. See 14 Hen. 6 Atr. tit. Gaukind.

Gaukind, Is a tenant who is liable to tribute. Villani de Terring qui vocatur gauvel. Sumer, Gau- kind, p. 73.

Gauklem, The duty or work of measuring of grain, or currying such kind, required by the lord in his customary tenant. — Confectans falcantique qui vocatur gavel. — Sumer of Gaukind, Append. — Et per una septemina domin facat fipula qui vocatur gavelmed, ib.

Gauklers, Javelin, darts, the flagge $c. being the same with ja, and so derived from jaum. Primos iugitora fijam Willielmam tam jacatis, quam unguari gavelones appellant, gavurer maxime notitiam habebunt et usum — hes l'isconser juventur. Mar. Par. aub anno 1356.

Gauklerp, Bedrep, or duty of reaping at the bid or command of the lord. — De custodia metuenda 40 acariorum cendimorum in hortia in autumno 40 fol. 6 decem. Sumer of Gaukind, p. 10, 21.

Gauklerp. See Gauklerp.

Gaukelter, (Sax.) Sextriurum veligalis; (seruicas fel- licis sextarius maneri vel prudens demum ab sibi fructuarii serivias quintas, conuii vel veligalis nominis, prorsus.) Is a type of gavelter, or rent of rent. About the same articles to be charged on the woads and bailiffs of the church of Canterbury's mansors, this of old was one. — De gaukelter cujuslibet bracini braziati infras libertatem maneriae, viz. Uhun lagenam et dimidiam cujuslibet. We may find it elsewhere under the name of Toke; thus, De Tokele gualter, faci et quibus bracIne per annum annorum legem de cujuslibet, and is without dispute the same. In lieu of which the abbots of Angstorn, of cuftom, received that penny mentioned by Selden in his Distinctione appertained to Eceto, cap. 8. num. 3, and there (I believe) misprinted Coilegleyn-penny for Tokeleyn-penny. Nor differs it (I think) from this Tokeleyn-penny, at the end of H. I. laws, as called cob-guell, Sax. Dict. and see Zollter, Cowell, edit. 1727.

Gauvelorch (Sax.) Was either manuopera by the hands and person of the tenant, or correpgra by his carts or carriages. Phil. of Tarrsonage.

Gaugerum, A gauging or gauking, done by the gauker. Librum de uxoriis 5 H. 3. de dolubor nofirura & gaugco mercaturum burzegul, & de gaucozarius done, & denarii prid. soli. obliv. ab empare, & obliv. a vendi- tore. Mandat per brevia de Cars. quad annus ligma de diis siunum fiant de ceith em reto gaugco anglicos. Ronan. Currem praeterea de eun. negl. — The true English gauker.

Gauger, (Gaukerter, from the French gaukerter, i. e. in gyrum torquere) Signifies an officer of the King's ap- pointed to examine all tuns, pipes, hogheads, barrels and tertia's 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. 3. 1. c. 8. 31 Ed. 3. 3. 1. c. 5. 31 Ed. 3. 3. 1. c. 8. Vellips of wine, vinegar, oil, honey, &c. shall be gauged, 4 Ric. 2. c. 1 18 Hen. 6. c. 17. Rheinsh wine exempt, 14 Ric. 2. c. 8.

The contents of pipes, hogheads, &c. of wine and fih, 5 Hen. 6. c. 11. The gauger shall at all times be ready to do his duty, 23 Hen. 6. c. 15.
Gentleman. Generalis is an irregular compound of two languages, the one from the French gentil, that is, Hughes, vel longiisa longus natus; the other from the Saxon man, as if you, a man well born. The Italiu follows the very word, allying the word we call gentleman. The Spaniard keeps the meaning, calling him hidalgo or hijo d'alge, that is, the son of some man, or of a man of reckoning: The French also call him gentilhomme. So that gentlemen are those whom their blood and race doth make noble and known; in other words, so like in Latin, nobilis, Smith of Rep. Arg. lib. 1. cap. 10. Under this name are comprized 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 latter, all from barons downward. Smith wh. foot. cap. 2. The reason of the name may arise from this, that they observe gentilisatem faum, that is, the race and propagation of their blood, by giving of arms, which the common fort neither doth, nor may do; for by the coat of a gentleman given, he is known to be such, or not to be descended from the house of his ancestors in so many years since. Gentiles humes, lie in Tarraque' del Nitikatia, cap. 2. pug. 53. Cicero in his Topics, of this matter speaks thus, Gentiles fac qui inter se edam fumum nominis or ingeninis arund, quam majorum nata ferculatam servavit, qui capitne non sunt diminis. And in the first book of his Tus. Smith of Arg. Ionicis, callit Textum gentilis, of the King's, gentleman's feum. These words, gentilis dom, for a gentleman, was adjudged a good addition. Hill 27 Ed. 3. The addition of knight is ancient, but of such or gentleman rare before the fir of H. 5. c. 5. See 2 Par. hist. feg. 595 & 667, where they are John Kingdon made a gentleman by King Richard 2. Pet. 13 Ric. 2. part. 1. n. 13. intit. Genu Generation. Successi Etehaldos Offa quinto gen. Malmoj. lib. 1. c. 4. Genu, North Wales. Cowell, ed. 1727. Genu, (Lat.) The general flock, extraction, &c. of the word is the same in law, gene or general; but the word for, is the species of it, or particular. 2 Lit. 528. George Noble. A piece of gold current at six shillings and eight-pence in 1 H. 8. when by indenture of the Mon one pound weight of gold was to be coined into the value he 1727. Cowell, ed. 1727. Genua. A clown or villain. Gennadus. Cowell. ed. 1727. C. pleasant. Gernutia, (Sax. Gerunfa, i.e. fumpus, praeumium.) In ancient charters it is used for an income; as Sciutus me A. pro tot libris, quos B. mibi dedis in gerunfa, dedulis, confcsses, &c. Sometimes for a fine or a fine; as, Gerunfa capo de nativa foffa ingregua fine lenta, quod dixit Childew. In Skelh, Par. is written Gerunfa. Datis abexti tralibus maris sui in gerunfa, i.e. pro fres. And in Scotland, gerunfa. Sometimes' tis taken for any an exaction or demand; as, Alach rexatientia cujuslibet confluentis fines rovetur, i.e. free alienus gerunfa, ex facultatis exillation. Mon. Ang. 21. cap. 13. tem. pa. 104. Gernutatius. Finable, or liable to be mutilated, fined or amerced at discretion of the Lord.—In Berton parvus—fatn tres cediefis quorum sulpitul obligatur fiemel in heboladato & mietis in aurum unam annum de tribus tria radiis etatis. Dovmus illeis tres cedieres, si voluntis, ad chorum in colnuncia quorum terminum ad voluntatem Domini. Cartular. S. Edb. MS. 1. 153. Cowell, ed. 1727. Gernutia, Allembled. Cowell. ed. 1727. Gern, (French, gift.) A lodging or flag of rest in a journey or progress. Smith of Rep. Arg. lib. 4. A. D. 1352. when the 57th, (i.e. the flages of his Majesty's progress) were altered, Archbishop Cranmer intreated Cecily to send him the new-sected gifts, that he might from time to time know where his Majesty was.
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And the faid A. B. for himfelf,
and adminijlrators, doth covenant and
grant to and with the faid T. B. his heirs and affigns by
his heirs and affigns,
thefe prefents, that he the faid T. B.
henceforth for ever hereafter,
fijall and lawfully may from
peaceably and quietly have, hold, occupy, poffefs, and enjoy
the faid meffuage, tenement, lands, hereditaments and premiffes hereby given and granted, or mentioned or intended fo
to be, with their appurtenances, free, clear and difcharged
other gifts, grants, bargains and
of and from all former and
and

affigns

for ever.

executors

his heirs,

feoffments, jointures, dowers, eflates, -entails, rents,
rent- charge, arrearages of rents, Jlatutcs, judgments, recog-

fales,

nizances, Jiatutes merchant

and from

all other titles,

In witnefs,

them, or any or either of them.

TO

from

or under him,
ijfc,

I A. B. of, &c. fend greeting.
That I the faid A. B. for and in confideration of the natural love and offeElion which I hove and
hear unto my beloved brother L. B. of, &c. and for divers
other good caufes and confiderations me hereunto moving, have
given and granted, and by thefe prefents do give and grant
ye.

all and fingular my goods,
and perfonal ejlate whatfoever,

unto the faid L. B.

hands, cujtody or poffffion foever they

be,

chattels,

whofe
within the kingdom
in

of Great Britain, (Sc. To have and to hold, and enjoy all
and fingular the faid goods, chattels, and perfonal ejiate
eforefaid, unto the faid

and

affigns,

L. B.

his

And I

the

to the only

L. B.

his executors,

proper ufe

adminifirators

and behoof of him the faid
and affigns for ever.

executors, adminifirators

faid A. B.

all

5

is"

See ©tttlD.

compenfation or muldl for a fault,

alfo a

amore in alterum furatum halent in duos geldos
From hence weregcld is the price of a

in

orfgeld the price of cattle, angild the fingle value

and fingular the aforefaid

geld,

There

goods.

are likewife

and which fhew the

kinds of payments, as danegeld, vadegeld, feneand many more. Ccwelly

1727.

CDtlDalC, (from the Sax. gild, i.e. folutio, and
contribution where every one paid his (hare.

cele, ale,)

Couiell,

See §>OtI)alC.

1727.

liable to

empt, becaufe ccclefia donata.
It is mentioned An. 27
H. 8. c. 26. but we find gildable expounded in an old
MS. to be that land or lordftiip which is fub difiriSlione
curia vicecorri.
See 2 Par. Infl. fol. 701.
Inquifitio
capta apud Atherflon, i^c. 5 H. 5. per facram. IVill.
Peirs
al. qui dicttnt quod Johannes Chefterfhire, qui tenet
unum tenementum IS duo crefta cum pertin. in le geldable de
fohanne Lile per quod fervitium ignorant, erexit crucem S.
jfohannis Hierofol. fuper domum fuam, ad habendum privi-

^

legium

£3"

Templar, de Baljhade,

libertat.

prad. tenementum fub
contra

formam

crtice in

Jiatuti inde

Dugdale, Ar.

fur.

eo

quod teneret

prajudicium Dom. Regis

editi, (s'c.

MS.

dsf

penes GuJ.

SempUngham

dicunt quod prior de

te-

net tres cariicaias terra in S. (^ non funt geidabiles.
Ex
Rot. Hundr. in Ttirr. Lond. de Anno 3 Ed. i. Line.
Pipes
adulterins.
Rot.
©iiDaC
3 Johannis. PerCowell, edit. 1727.
haps ufed for adulterate money.

CDilljalDa 2CClttOntfO?tim, Was ufed for the fraternity of Eafterling merchants in London, called the Jiill-

yard.

22 Hen. 8. cap.
See ColD.

Stat.

dDtloing.

(II5ilD:?mcrrljant,

(GUda

privilege or liberty granted

8.

mercatoria)

Was

to merchants,

were enabled (among other things)

a

certain

whereby they

to hold certain pleas

of land within their own precinfts ; as King John granted gildham mercatoriam to the burgefles of Nottingham.
dDtltluitc.

dDitDlersi,

15 Ric.

2.

See (35i)Ittoite.
See ^jjtcerj'.

dDinjcc.
c.

May make

their girdles with

white metal,

ir.

(©irarmiS, or CDtlifarmClS, (mentioned in the ftatute

From the Lat.
13 Ed. I. flat.' 2. c. 6.) An halberr.
A kind of
bis arma, becaufe it wounds on both fides.
hand-ax, according to Skene. .Fleta mifwrites it fifarms,

of goods and chattels.

all people, (sfc.

plate, jewels, leafes

company.

and
6 Ed. 6.

fulling

for

ftat.

deniable, (Geldabilis,) Tributary, that
pay tax or tribute.
Camben, dividing Suffolk into three parts, calls the drfi gildable, becaufe liable
to pay tax, from which the other two parts were ex-

£5?

Know

Mon.

CUtltiabIC or

is,

and of thejlaple, extents, and of
and incumbrances

terfons laivfully claiming or to claim by,

gift

A

troubles, charges

whatfoever, had, made, committed, done or fuffered, or to be
had, made, committed, done or fuffered, by him the faid A. B.
his heirs, executors or adminijirators, or any other perfon or

A

fraternity or

(0tlD, Is

feveral

with the appurtenances
and all deeds, evidences and writings concerning the faid
premiffes only, now in the hands or cujiody of the faid A. B,
or which he may get or come by without Juit in law, to have

heirs

A

d^tlD,

geld, hornegeld, fotgeld, penigeld,

part and parcel thereof,

it the only

kind of fulling-mills,

of,

;

and

A

(I5iC5mili.S,

be-

and preferment of the faid T.
aliened, enfeoffed and confirmed, and by thefe prefents doth
give, grant, alien, enfeoff and confirm, unto the faid T. B.
Jll that meffuage or tenement, fttuate, &c. with all and
fmgular its appurtenances, and all houfes, outhoufes, lands,
tic. and the reverfton and revcrfions, remainder and reand all
mainders, rents and fervices of the faid premijfcs
the ejlate, right, title, intereji, property, claim and demand
whatfaever of him the faid A. B. of, in, and to the faid
in, and
meffuage or tenement, lands and premises, and of,
to every

flream of water to a mill.

3.

burling of woollen cloth, prohibited by
cap. 22.

A. B. of the other part, witneffeth.
A. B. as well for and in confideration of the
and affeSJion which he hath and heareth unto

T. B.

the faid

The

aquae,

(25ifta

Ang.

of a thing, tzvigild the double value.

l^c. fon of the faid

That

ad-

by thefe prefents.

many words which end with

0/, i^c.

his executors,

componere faciat.

of tenements and lands.

Indenture, made the day and

tween A. B.

L. B.

whatfoever, /hall

man,

Form

the faid

and will warrant, and for ever defend

King, being apprifed of the value, lets a thing
referving only 5/.
for years, £5?f. worth 500/. per ann.
Skin.

to

affigns, againji all perfons

If the

per ann. this is not a letting to farm, but a gift.
151. in the Exchequer. Arg. ^^ Car. 2. B.R.

premiffes,

and

minifirators

lib.

I.

c.

Efl armorum genus longo manttbria

14.

Spel.

porre£la cufpide.

Marifcus profert gladiolum, cefMat. Parif. An. 1206.
dDlabtllSi, (J'*^ Z^eidii,} Is mentioned in our Latin
authors, and in the Norman laws, and it fignifies a fu-

ClaUiolltm, Sedge.

pites

£3'

alia ignis pabula.

Camden, in Britannia, writes Comiad gladium Ceflria. And in Selden,
Tit. of Honour, pag. 640. Curiam Juam liberam dc omnibus
placitis, &c. exceptis placitis ad gladium ejus periinentibus.
And 'tis probable from hence, that at the creation of an

preme

iurildidiion.

tatus Flint, pertinet

earl,

he

is

gladio fuccinitus, to fijnify that he had a jurif-

See Pleas of the Sword.
fword ; alfo a lance or horfeman's
and dngger, were
Gleyre, long fword, fhort fwor.
ftafF.
the weapons allowed the parties in a trial by combat.
di(Sion over the county.
(EJlail'C,

(Fr.)

A

'

Coivell, edit.

17 27.


G L E

Glaisgill, was a learned lawyer, and Chief Justice in High Court's Seat, who wrote a book of the Cause in the Land of England, which is the ancientst of any extant, touching that subject. Simon C. Pros. cap. 1. sed. 5. He was then called in Latin Revolutiv de Glaisgill. He died in Richard the First's days, at the age of 60 on the coast of Palatinum, being with him in his voyage to the Holy Sepulchre, and was buried at St. Helen's, in the church of the same city. The penalty of exporting glais from Ireland, 19 Gen. 2. c. 12, sect. 19. Penalty of exporting glais from Ireland, 19 Gen. 2. c. 12, sect. 21. Duty on exportation, &c. 19 Gen. 2. c. 12, sect. 16, &c.

Gleismen, Are reckoned among wandering rogues and vagrants, by the old statutes, 39 Eliz. and 1 Stat. 1. c. 7.

Gleis, A glave or gleave, a javelin, a hand-dart. Quod vidiri subjiciat de glavis et alabastrer in gangafliff, tels gralins, quid ganea (legendum e glavis) diévis, cum jarn conquisit posto posta, quia scilicet capitum manu multi prefurit. Gervas. Dunsbern. fept. ann. 1118.

Glawance or. See Plowden, f. 320, the case of mines.

Gleba, Obelam ferre. Anns 1335. Coffes & maqvrater dominus Beatrice Maria Malagleone extra partum ass. Propter cuta violentia cognomina tolerant glauum pro reddito ex parte deo gervino extra parum orientalem cognomina prestat. Morte Morly Sluselby & has cognostum vocatur gleba. Jacko Antiquitates of Extey, p. 48. For it seems the ancient custom of that city was, when the chief lord in fee could not answer the rent due to him out of his tenement, and no deliverer could be there levied thereupon; then the land to stay; and there took a turf or stone, and brought this fame to the court seven days successively; and this was called Gläba. H. b. p. 50.


Gleba, Obelathumb. (Gleba,) Church-land. Dux vel terra ad ecclesiam pertinent. Chars Effredi Regis, Monast. de Crodon, apud Inshulph. Impri syn in pallium Christiana pro gleba ecclesiastic. & pro futo separali eumhurtei done. Synodale says, Gleba s. f. terra in qua competet ecclesiae, et alio pro positum ad foci terrae curas mentioned in the statute of 14 Car. 2. c. 25. We most commonly take it for land belonging to a parish church, besides the title. Synod says, The four acres of land, quilk is given to the ministers of the church in Scotland, is called one glebe, the quilk field be free fra payment of any tithes. Cowell, edit. 1727.

Glebe is a portion of land, meadow or pasture, belonging to, or parcel of the parsonage or vicarage, over and above the tithes. Galsp. Rep. 459. 

Glede, A small herd of the glebe, which is a void except for no reftory may be without glebe. But he may exact these glebe. So of a manor, excepting the demefnes. Mich. 19 Jue 1. per Hobart, Wince 23.

Glebe (s) in the case of Myle v. Ever. Glebe, as the Plaizant the reftory, respecting the land, he shall pay tithes to his grantee, 2 Boll. 184, in the case of Myle v. Ever. The endowment of the vicarage has special words, that the vicar shall have minutes deehn of the glebe, be shall have it. Not; It ought to be ancient glebe at the time of the endowment. At. 910. Tit. 38 Eliz. Binks cafe.

Glebe, As long as the vicar occupies the glebe land in his own hands, he shall pay no tithes, but if he demeene it to Vol. II. No 94, another, the leffe shall pay tithes to the parson that is improred. Leafe, &c. Harris v. Cotton.

Glebe of the glebe shall be taken by the parson, if it be at a very low rent, otherwise if it is at a rack rent; for quare of the diversity. Ng 35. Perkins v. Wilde.

If the parson of a church not impropre algebra the glebe, he shall pay tithes. But otherwine's, if it is an impropre church, because of the statute of 32 H. 8. of dilillation, Ng 152, cites it, as the case of Sverre v. Vifyr, cites D. 43. a.

By flat. 28 Hen. 8. c. 11. sect. 6. Incumfent may devif corn fown by him, and growing on his glebe. A prohibition was granted to lay wales, upon a fugg-tion, that the glebe of the Gleba, and plagued up the ancient glebe land, Camp. 59. Tit. 3 Jue 4. B. 2.

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 Car. 1. Chm. Rep. 41. Morgan v. Clerke.

Parson exchanges his glebe land and dies; the successor enters into the exchanged land, and takes the profits; yet the successor is bound for his time; & adjurator. '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. Ng 5. Thovert's case.

Prohibition was moved for to a parson for digging new coal-mines in his glebes, and also for setting trees; for 'twas waffe and prohitibable by the statute De ne pronomantur arboros, &c. The court held, it lay not for the mines; for then no mines in glebe could ever be opened. Lev. 107. Tit. 15 Car. 2. B. R. Earl of Rutland's cafe.

By statute. 25 Hen. 8. c. 11. Every successor, on a month's warning, after induction, shall have the manion-house, and the glebe belonging thereto, not fown at the time of the predecessor's death, 28 H. 8. cap. 11.

He that is inflicted may enter into the glebe land before induction, and has right to have it against any stranger, per Cels Ch. J. Roll. R. 192. See Ulfarr.

Glencybern, A customary or servitude. See Collegio, edit. 1727.

Gloeberries, Commisaries appointed to hear the differences between the scholars and the townsmen. In the edit of Hugh Balgun, bishop of Ely, an. 1576, there is mentioned the Matter of the Glcestor.

Gloestere and Glocesterchirche. The statute of Glcestor and its exposition, 6 Ed. 1. b. 1. c. 2. The custom that the lands of schors shall be refered to the church, after the vicar's death, 17 Ed. 2. fl. c. 16. For rebuilding the town, 27 Hen. 8. c. 1. The poor in Glcestorshire provided for, 13 Geo. 1. c. 19. For suppling the city with water, 14 Geo. 2. c. 11. For en-larging the streets and market-places, 23 Geo. 2. c. 15.

Gloves, Frames for knitting gloves not to be exported, 2 & 3 Will. 3. c. 30, s. 8.


Glynn, Signifies a valley in Down. Cowell, edit. 1727.

Gl, Is used sometimes in a special signification, as to go to Glcestor, to be difcharged in court; to alo is to go without day. Brer. tit. Eylar de Records, nam. 1. See Smith de Rep. Angl. lib. 2. c. 13. and钦Bin, f. 193.

Gleaning of vagabonds, That is, feeding them to the wall, 35 Ed. 1. c. 7.

Gloster, may compare with gates within the forest without especial warrant. Note, That Glostem ex bofia vallantinor ferfris, Manwoode's Forest Laws, cap. 25, num. 3.

Com's
Gold, silver, and goldsmiths. Goldsmiths shall make their work of due standard, and shall be ordered as the goldsmiths of London, Act. pater Chart. 28 Ed. 1. c. 20.

Gold and silver shall not be carried out of the realm, 9 Ed. 3. f. c. 1. 38 Ed. 3. f. c. 7. 5 R. 2. f. c. 2. 2 H. 6. c. 6. 17 Ed. 4. c. 1. 4 H. 7. c. 3.

Goldsmiths work shall be assayed and marked, 37 Ed. c. 7. 2 H. 6. c. 14. 17 Ed. 4. c. 1.

Note that make white plate shall fall, 37 Ed. c. 7. Exchanges of money out of the realm, not to be made without the King's licence, 5 R. 2. f. c. 2.

Multiplication of gold and silver, 5 H. 4. c. 4.

Reliefed 1 H. 7. c. 30.

Gilding or silvering copper or laton prohibited, 5 H. c. 13.

Silver gilt shall be good alloy, and shall be fold at 45 s. 8 d.

No metal shall be gilt but silver, or any thing filtered but knights spurs, 8 H. 5. c. 3. 17 Ed. 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. c. 4.

Foreign goldsmiths shall dwell in open freets in the city, 17 Ed. 4. c. 1.

Refiners shall flee to none but officers of the mint and goldsmiths, 4 H. 7. c. 2.

Shall sell silver into masts molten and alloyed, 4 H. 7. c. 2.

Silver shall bear 12 penny weight alloy in a pound, 4 H. 7. c. 2.

Deciet in gold lace of Venic, 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. c. 12.

Gold and silver extruded from metals to be sent to the mine, 1 W. 11. M. f. c. 20. fell. 3.

Penalty of casting ingots like the Spanish, 6 & 7 W. 3. c. 27. f. 3.

Officers of customs may seize bullion if shipped unflamped, 6 & 7 W. 3. c. 17. fell. 6.

Penalty on broker selling bullion, not being a trading goldsmith, 6 & 7 W. 3. c. 17. fell. 7.

Warden of the goldsmiths may search for bullion, 6 & 7 W. 3. c. 17. fell. 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.

Gold and silver shall not be stamped at Goldsmiths Hall before exportation, 6 & 7 W. 3. c. 17. fell. 5. 7 & 8 W. 3. c. 19. fell. 6.

Public houses prohibited to use plate, 7 & 8 W. 3. c. 19. f. 3.
the King and his liege people, whereinunto men upon their evil course of life, or hideous demonet, are sometimes bound: For as Lambert, in his Earthward, lib. 2. c. 2. it is said, that by this is more finely bound than to the peace; for the peace is not broken without an affray, but this fury De bona gesta may be forfeited by the number of a man's company, or by his or their weapons or harneis. See also Gran. foil. of Fetics, fol. 110—117. Couns. 

Convict behawing. See Good behaving.

A binding to the good behaviour is not by way of punishment, but it is to show, that when one has broke the good behaviour, he is not to be trusted. Per Hilt Ch. J. Trin. 1 Aua. B. R. Farr. 29, in the cause 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.

2. When surety is discharged or superseded; of breach thereof, and of proceedings and proceeding therein.

1. In what cases, in what manner, and how long, a person may be compelled to find surety for his good behaviour.

Per Hilt Ch. J. Trin. 1 Aua. B. R. Farr. 29, in the cause of the Queen v. Rogers. 

A law none can be compelled to find surety for his good behaviour, except be by ancient custom with his consent, or for vagrancy, or some certain offence; and here one being committed thus: Whereas A. has been convicted of a misdemeanor, and cannot find security for his good behaviour, therefore, &c. And here could be no certiorari, there being no record of the conviction, the party being brought up upon a habeas corpus, was discharged on motion, per cur. Trin. 12 W. 3. B. R. 12 Med. 413. Anw. 

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, it is said, 1 Hilt Ch. J. 1 Rich. 13 W. 3. B. R. 12 Med. 566, in Eldin Clinton's case. 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. Paulf. 25 Car. 1. Sir Wiliam Brocket's café. If a witness is insolent we may commit him for the immediate contempt, or bind him to his good behaviour, but we cannot indit him for it, and that is according to the Common law of England; per Hilt Ch. J. Trin. 1 Aua. B. R. Farr. 29, in the cause of the Queen v. Rogers. 

Surety for the good behaviour may be required of Gallicans, turbulent, insolent persons, as of forfible entires, or obfene writers or raufons, but not in respect of bare words; unless they tend to a breach of the peace, or scandal of the government. Hench. Pl. C. cap. 61. 

9. See Pl. 1, 2, 3, 4. 

A. was committed to Newgate by the mayor of London for calling B. an alderman of London, fool and knave upon the Royal Exchanges, in the presence of others; upon a habeas corpus, it was certified, that the cettom of London was, upon such a misdemeanor, to commit any citizen to prifon, &c; but by act of the whole court, he was discharged. And Harman said, He could not see how the cettom could be maintained, and that a man may be imprisoned for a contempt done in, but not for one done out of court. Cro. E. 689. Trin. 41 Eliz. B. Chaf. Daven's café.

One was indicted for that he slandered & contemnuoue propatarst a publick man in this manner. That none of the justices of peace underlaid the flattates for the ex-céfe, unless Mr. A. B. and he underlaid but little of them; no, nor many parliament men do not understand them upon the reading of them. And it was moved to quash the indictment, for that a man could not be indicted for speaking such words; and of that opinion was the court. But they said he might be bound to his good behaviour, Per Jefh. 21 Car. 2. B. R. Inst. 16. The King v. Barford.

In an action on the cafe for maliciously prosecuting an indictment of perjury, of which he was acquitted. Upon Christ assailed, it appeared on the evidence, that the defendant was a justice of peace, and procured good behaviour, as witnesses to appear against the plaintiff, and his own name was indorsed on the indictment to give evidence.

The court agreed, this did not make him a proctor; for if a justice of peace knows any person that can give evidence against one indicted, he ought to cause him to do it. But it seems approved on the evidence; for that this indictment was drawn up by an order of fellows. Kyfing Ch. J. said, the plaintiff deceased to be bound to his good behaviour, for bringing this action. Medb. 2. B. R. Fett. 47. Geyling v. Pelfield.

A offers money to a woman with child to buy poison to kill the child: this is a good cause to bind A. to his good behaviour. Trin. 28 Eliz. B. R. Cas. E. 49, in the case of Sir Cecham and Ut. v. Wintam. 

If one do affront any court of justice, this is a good cause to bind the party to his good behaviour. Perch. 24 Car. 2. B. R. For the affronting of justice is a publick misdemeanor, and not a private one, although it be done but to the person of one man, as to the judge of a court, a justice of peace, &c. because such persons are publick ministers of justice, and act for the commonwealth. L. P. R. 649, 650. 

S. at 34 Ed. 2. 1. Improvers justices of peace to chaffle rioters, barbarers, and other offenders, and also to imprison and punish them according to law, and by diʃcretion and good advisement; and also to bind persons of evil life to the good behaviour, and to hear and determine icencies and trefpafs done in the fane county according to law.

This statute being penned in such general words from a great measure to have left it to the diyention of justices of peace, to determine what persons are fit to be bound to their good behaviour, and consequently seems to improperly them, not only to bind other, who fercm to be notoriously trouble-makers, and likely to break the peace, as eves-doppers, &c. but also those who are particulaly scandalous, or contemners of justice, &c. as haunts of bowdy-houses, or keepers of lewd women in their own houses, common drunkards, or thiefs that live in the day, and go abroad in the night, or such as keep infamous companies, or such as are generally suspected as robbers, or other kind criminal persons; and such as become contemnuoues words of inferior magistrates, as justices of peace, mayors, &c. not being in the actual execution of their offices, or of inferior officers of justice, as constables, &c. being in the actual execution of their office; but it seems that rath, quarter-fome or unmanly words, spoken by one private person to another, unless they directly tend to a breach of the peace, are not sufficient cause to bind a man to his good behaviour. 1 Hench. Pl. C. Afr. 152. cap. 61. j. 2. the book at large, fett. 2. 3. 4. 

Sureties of good behaviour may be required of persons convicted of disturbing divine service, 1 Hf. 2. c. 3. fett. 6. 

Or defending against game laws, 5 El. c. 21. fett. 3. 22 & 23 Car. 2. c. 25. fett. 4. 

Or entertaining outlawed felons, 43 Eliz. c. 13. fett. 5. 

Or perfons infected with the plague going abroad, thas no fett. 1. 31 fett. 7. 

Or unlawfully hunting in pafs. 2 Jac. 1. 1. 3. fett. 2. 

Or convicted a second time of drunkenneses, 4 Jac. 1. c. 5. fett. 3. 21 Jac. 1. c. 7. fett. 3. 

Or referring to take the oaths of supremacy and allegiance, 1 Hf. & M. 2. c. 8. fett. 9. 

Or oath made to the throne, 5 Hf. & 2. c. 13. fett. 2. 

Or of persons unlawfully gaming, 0 den. c. 14. fett. 6. 

Or committing disorders in dock-yards, 1 Geo. 1. c. 25. fett. 2. 

Qe.
Or defouling timber, 1 Gen. 1. c. 48. sect. 3.
Or forcing through turnpike, 8 Gen. 2. c. 20. sect. 11.
Or pretending to witchcraft, 9 Gen. 2. c. 5. sect. 4.
Or affilling in running good, 9 Gen. 2. c. 35. sect. 19.

Where one is arrested to the peace, the justice is not bound to demand sureties, but the party ought to offer sureties, otherwise the justice may award him to good.

Br. Peace, pl. 7. sect. 23 H. 7. 8.

Note: Where supplication of peace is directed to the justices of the peace, to whom the writ is first delivered, shall alone make pretent to take the pary to
find sureties, 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. sect. 21 H. 7. 20. per Fin. Chief Justice.

The court was moved to grant the good behaviour against the Lord Folio, because he was indicted for a foul
batter at the felions in London, and the bill was found against him; but per Roll 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 caufe in the articles, it shall be granted. Sir, 397. Mich. 1671. B. R. Davus v. Lord Folio.

That he does, a favours sworn in court, declare that the party, against whom the articles are sworn, may be bound thereupon to the good behaviour, must express some special matter 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 no acquittal upon account of the uncertainty of it, and the party cannot tell what answer to make to such a general accusation. 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 Roll Ch. J. Pafch. 1652. B. R. Sir, 379. 1253. 1256.

The return of the recognition ought to be certified by the persons who took it, and if by any other, as the sheriff, &c. it is not good. Trin. 21 fac. 1. B. R. Crow. 669. Leonard Ford v. King.

By the course of the court, a person bound to keep the peace, ought to continue upon his recognizance for a year; per Holt Ch. J. 12 Med. 251. Mich. 10 H. 3. B. R. 2.

When such surety is discharged, or superseded, of breach thereof, and of pleading, and proceeding therein.

In error, when the peace is granted in B. R. and after superseded of the Chancery comes to them, it is to all intents and purposes their power in bank is expired, and the party, against whom it was awarded, is discharged against them of the bank; per all the justices. Br. Peace, pl. 17. sect. 21 Ed. 4. 458.

And when a man has found surety to keep the peace against A. S. and all the King's people, the party cannot release it after, because others have interpell in it; but by and by, it is used otherwise now. Ibid.

And if he pays the money, he shall be awarded to presume that the peace is now determined, and he appears to be a tressfeifer of the law; and if the sureties die, there, upon a form of the King's attorney, the court shall award proceed, to compel the parties to find new sureties; per all the justices, and by others s. contra, for the executors are old Adam. Ibid.

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 main-prize taken by the former of the King his predecessor. Tempore E. 3. tit. Re-attachment in Fine, 18. And such main-prize was anno 1 H. 7. 20. And the opinion of the court was, that by the death of the King it is discharged; and that every forfeiture of the peace, and main-prize, for keeping of day in the time of another King, are discharged by the demise of the King in every court; good fait con-

...
To have security of peace of one, you must make af-
dvance of the cause of fear, and exhibit it in articles, and
then make affidavit that you demand this, not of any
ill will or malice, but out of fear of some bodily hurt.


See [362]

Good country, Bene patria, is an affile or jury of
countrymen or good neighbors. See De Verba. Sig. 2.
Verba Patrum.

Good and thistle, (Bona & cardo) Personal, &c.


Good, (from the Fr. goulet, or the Latin gula) In a flat,
[364] 17 Car. 2. cap. 11. is a breach in a bank, or
erosal, or a passage where the flux and reflux of the
sea.


Good, Court, and Guia, (from the Fr. gerts, i.e. a
wear) Locut in flavis centenariis, psalmi ciprum et glandan-
orum. A wear. It is recorded, that all such gorses,
mills, stones, boats, kites, and kiddles, which he leased
and set up in the time of King Edward, the King’s
grandfather, and after, whereby the King’s ships and boats
were disposed, that they could pass in such water as they were
want, shall be out, and utterly pulled down, without being
Litt. fol. 5. b.) seems to derive it from gwes, a deep
pit or water, and calls it gerts or guef. But geurs, or
not a mistake. For he says in Domesday, it is called
qued gorse, and the verse rhymes for a gers. And we
find in the Black Book of Hereford, fol. 20. Quad
tris gorgites in aqua de Meneau anchoriatur per banum in
Grande monte. Where gorges is used (tho’ improperly)
as a Latin word for gorses or walks. Coke, edit. 1727.


Cope, A small narrow lip of ground. — Due réde
juste mont vent femel letiit gors paper flussering. Paroch.
Antiqu. p. 399. Una unc a denumia gorda manum stedam,
& vacantur quinque gorges, lib. 532. Una unc cum una gore.
lib. 534. See Kemner’s Glossary.

Gert, (from Lat. gutter, or Saxo gustan) A ditch,
stream or gutter. Coke, edit. 1727.

Ghastly Onomat, Ghastly; Ghastly, Ghastly, Are certain
officers appointed to take care of, and relieve the poor
and maimef men belonging to the King’s navy, 11
& 23 Car. 2. Att. to prevent Difficulties of Seamen, &c.

Graft. Acts of parliament for a general and free par-
don, are called Acts of Grace. 7 Geo. 1. c. 29, &c.

Graal See Chalice.

Graduates, (Graduat) Are such scholars as have
taken degrees in an university. 1 H. 6. c. 3.

Gratus, A year; the epiphany William the Con-
queror in Ordinaries vitalis, lib. 8.

Pro simp. gradibus & fervator atque dudous
Virgini in Gremio Plautii, &c. Skif pick.

Graffer (Fr. Greffer, Sarre) Signifies a notary or
scrivener, and is used in the Stat. 5 Hen. 3. c. 1.

Grafia, Graffio, Graffio, An Earl, as Land-
grave, a Magnate, a Judge, an Advocate — Nex
principis, ut graffio hanc tentatione praefato matter ac-
lib. 100.

Grafittium, A writing-book, a register, a lieger-book
or cartulary of deeds and evidences. David Episcopus
Meneva, duum aedificii in excellam de eis, a cibellio capitele fideli subdito, & librarium graffitium qua 
graffio cum splendor. Annual. Eccles. Meneverens

Graile, Graible, or Graulbe, A gradual or book
containing some of the offices of the Roman church.
Grable, says Livywood, sic dicitum a gradibus in tall li-
bra contents, Provincial. Ang. lib. 3. The word is men-
tioned in Plaudus, fol. 552, and 37 H. 6. 32. It is
sometimes taken for a mafs-book, or part of it inscribed
by Pope Celfinius, Ann. 432. according to Citgrave.
Cowell, ed. 1727.

Grable, The 24th part of a penny-weight. In 51
Hen. 3. Denerius Anglia qui nominat Belrigalii, recus-
dus fines benva ponderabili triginta & duos gramis
frumenti in media mone. Threfe thirty-two groats in the middle of
Vol. II. No. 84.

the ear of corn are the natural grain, which for the bet-
ter accommodation of accounts, are now reduced to
twenty-four artificial grains. Cowell, ed. 1727.

Grain, Stubs or bushes. De Gramina uerista. Mon. 2
cont. p. 31. See French, "Bristle.

Grand affile. See Affile and Magna afellia.

Grand rape. See Cape and Attainment.

Grand days, Are those in every term solemnly kept in
the inns of court and Chancery, &c. In Eweter-term,
Assize-day, in Trinity-term, St. John Baptist’s day, in
Michaelmas-term, All Souls-day, (and of late All Hall-
day) and in Hilary-term, the Feast of the Purification
of our Lady, commonly called Candlemas-day. And there are
Dies non juridici, no days in court. Cowell, edit. 1727.

Grand offioe, Magna difficiltas. It so called for the
quality and extent thereof, for thereby the sherif is com-
manded, and the other justices thereto, to make such
quis qui fumma eo suum opponat, dice bonum ilium
ractenam, & quod de extilias urverdum moni reipublific, &
quod haleat corpus eis, &c. This writ lies in two cases,
either when the tenant or defendant is attched, and so
returned, and appears not, but makes default, then a
grand default 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 capa, 2 Par. Inst. lib. 254. 51 H. 3. cap. 9.
Wyn. 1. cap. 44. and Fitler, lib. 2. c. 69. It will, penalis.
See Chalice.

Grand jury. See Jury.

Grand testamp. See Chevalry and Serenity.

Granger, (Grafiapia) A house or farm, not only
where corn is laid up, as barns be, and granaries, &c.
but also habes for horses, stalls for oxen, sties for pigs,
and other things necessary for husbandry: And by the
grant of a grange such places will pass. Provins. Angl.
lib. 2. tit. De jussicta, cap. item amiri.

Grangerus, The granger or grange-keeper, an officer
belonging to religious houses, who was to look after
their grange or farm in their own hands. — Grangerus, qui
sive succedentem de feudo causae officii sicuti et alicujus
habi et aliquo, denatur effigies in carta graniaria, &c.
Iam in canoni
canibus commendariis intendero. — Ex Cavarl. S. Ed-
mundi, MS. fol. 323. He was otherwise called gran-
arius, and in this he differed from the granaristus; that
this later was keeper of the granary 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 fassobinorum quod praestat fit granarius & gran-
arios fundal. Flota, 1. 2. c. 12. sect. 1.

Gratiation, Is he who has the care of places for all
manner of holden. See Orange and Chantage.

Grant. (Genus) Signifies a gift in writing of such
a thing as cannot aptly be paid or conveyed to the grantee
only, as rent, reversion, services, advowsons in groes,
common in groes, tithes, &c. or made by such persons as
cannot give but by deed; as the King, and all bodies po-
lieick, which differences are often in speech neglected,
and then it is taken generally for every gift whatsoever,
made of any thing by any person; and he that granteth
is named the grantor, and he to whom it is made, the
grantee. II. Lib. Symbol, part. 1. lib. 2. sect. 334.
A thing is said to lie in grant, which cannot be assigned
without deed. Caks, lib. 3. fol. 63. Lincoln college cafe.
Cowell.

The word grant is regularly applied to things incor-
poral, such as advowsons, rents, common, reversion,
&c. which are therefore said to lie in grant, and not in
livery, because they can’t pass from one to another
without deed. G. Lib. 172. a. 332. a.

On this distinction between the corporeal and incor-
poral, it hath been held, there can be no discontinuance of
things which lie in grant; and therefore if tenant in
tail of a rent, advowson, common or remainder, or re-
version expectant on a freehold, make a grant by deed or
die, or divide the tenant of the land, and of such rent
it is liable, there is said to be a feoffment with warranty, that
these acts work no discontinuance of the intail; for nothing passes but during
the life of tenant in tail, which is lawful. 

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 license of covenant; for the tail remains in the grantor, and so by consequence the houses are also in him.

The kind of persons held of advowsons in right of their churches are restrained from alienating the same, or granting the next or other advantage thereof, to the prejudice of their succedors; for these are parcels of the possessions and hereditaments of the church, and not things whereof an annual rent or profit can be referred.

But the these grants are void against their succedors and the King, yet the grant of a beneficial in such case, is good against himself; so that he cannot avoid it during the time that he continued bishop, the statute being made only for the benefit of the succedors and the King, that by the preceding penitentiary they might not be prejudiced in their respective rights; but not to retain those in poftsession from doing any thing to bird themselves during their own time.

The like law in case of grants made by deans and chapters, for they are void when the dean (being principal member of the corporation) dies, and binds both dean and chapter during his life only.

As the grant of the next avoidance of an advowson is void against the successor himself, but shall bind the bishop and corporation; an advowson may be granted by a bishop out of the poftsession of the bishoprick, this is not void against the bishop that makes the grant thereof.

Where the matter and fellows of a college by deed indorsed a leave not warranted by the statute, and levied a fine, and years passed without claims; in this case, tho' it was held, that the leave was void against the succeeding matter, yet that it was good during the life of the matter that was party to the leave, and made no claim, because he is the head and principal part of the corporation.

In infants 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. 

But herein the law distinguishes between such grants as are void, or only voidable; The first of which are all such 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 horse take the horse by force of the gift, the infant shall have an action of trespass, for the grant was merely void.

But if an infant enters into an obligation, makes a feoffment, levies a fine, or suffers a recovery, these are not merely void, but only voidable by him. 

If an infant being fed of a carde of land, grant a rent-charge to be infeuing out of the same carde by deed, and the grantee disclaim, he shall punith him as a trespfter, notwithstanding that the infant delivered the deed with his own hand. 

If an infant grant a rent by fine, this grant is voidable by himself during his minority, by a writ of error; but if he do not avoid it during his minority, it is good for ever; also if he die during his minority, his heir shall not avoid it.

An infant being lord of a cophold manor may grant copholds; these estates have their force and effect from the custom of the manor by which they have been defignated, and are demolishable, time out of mind, without any regard to the person of the grantor.
After a grant to a man in fee farm from a man in fee farm is made, the grantor is bound to deliver it to the grantee and to perform all the promises made in the grant. The grantor is also bound to inform the grantee of any material facts that may affect the grant. If the grantor fails to deliver the grant, the grantee may sue for specific performance or rescission. If the grantor delivers the grant but it is subsequently found to be defective, the grantee may rescind the grant and seek damages.

The grantor is also bound to indemnify the grantee for any losses suffered as a result of the grant. If the grantor breaches this obligation, the grantee may sue for damages. If the grantor has knowledge of a defect in the grant, the grantee is entitled to rescission even if the grantor is ignorant of the defect.

The grantor is also bound to pay any taxes that may become due after the grant. If the grantor fails to pay these taxes, the grantee may do so and recover the amount paid from the grantor.

In summary, a grantor is bound to perform all the promises made in the grant, inform the grantee of any material facts, deliver the grant, indemnify the grantee for any losses, and pay any taxes that may become due after the grant. If the grantor fails to do so, the grantee may rescind the grant and seek damages.
nor the grant to them, and in which part of the whole the grant should take effect, and according to such direction the attorney is to enter. 1 Lev. 32.

3. 

What is the interest of a may 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, and afterwards he purcath the manor of Dale, yet as it respects the same. Perk. fait. 65.

A corroyly uncertain cannot be granted over, because of the prejudice that may accrue thereby to the original granter; but a corroyly certain may. 21 Ed. 4. 43. 2 Rol. Abr. 45.

So a common found number in fee may be granted over, but a common found number for life or years found number cannot be granted over, because of the prejudice it may be to the tenant of the land. 21 Ed. 4. 84. 2 Rol. Abr. 46.

If the King grant a warren to J, and his heirs in his name, the grantee may grant the warren over to another in fee, because this liberty is inherent of the same seignior. 2 Rol. Abr. 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 Rol. Abr. 46.

If a rent be granted in tail, the grantee cannot grant it over without the consent of the tenant, because, as such, it may be invested within the statute of uses; 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 it become a fee-simple conditional, as such a gift of lances had been before the statute; and therefore the annuity not being within the statute may be aliened or granted over. Poph. 87. Co. Lit. 19. a. 7 Co. 61. Necic's case.

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 faults and difficulties for a thing, which in its original creation was simple and recoverable upon one annuity; but the answer to this is, that it is the tenant's own choice, whether he will submit himself to that inconvenience or not, because the grants, before the 4 & 5 Ann. could not take any benefit of the grant by difficulties, without the consent or agreement of the tenant, nor by affize, without he obtains fein of it from the tenant; besides, since the law allowed of such a 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 convenience of his children, or to provide for the contingencies of his family, which were in his view. 9 H. 6. 13. 2 Rol. Abr. 45. Co. Lit. 148. a. but Grat. Eliz. 747. fees 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 or thing, in all a full act, to be Titil for payment broken to be granted or aliened over. 21 Ed. 4. 24. 2 Co. Lit. 214. 1 Rol. Abr. 356. 2 Rol. Abr. 45. and Skinner 6. 26. that arcarages of rent are not alienable.

So though a bond be a chofe in action, cannot be aliened over, for as to enable the assignee to sue in his own name, yet he has by assignment such a title to the paper, wax, that he may keep or cancel it. Co. Lit. 231. 2 Rol. Abr. 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 writing, and the grantee in an act of demise brought by the former executors may be sufficient for their benefit. 2 Rol. Abr. 46. Grat. Eliz. 478. pl. 8. 496. pl. 15.

So a husband possessed of an obligation in right of his wife may alien it to a stranger, and the assignee may
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 the condition of the grant, that they shall be 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 Rel. Abr. 47. Sanderlin, and Husk. 2d.

If a man grant of divers woods bargains and sells 500 cords of wood to B. and his affigees, to be taken by the appointment of the bargainer; by this bargain and sale a present interest is in B. in which he may grant over before any appointment by the bargainer. Mer. pl. 95. 2d. 2 Rel. Abr. 96. 3d. 8. C. C. cited.

A man may grant that which he hath potentially, though not actually, as if a feoff covenant 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. Graham and Halley adjuged. 2 Rel. Abr. 48. 3d. 8. C. C. cited.

So if A. lease land to B. for years, and grants that he shall have a present interest in the soil, as grants which news yearly, which shall be on the land at the end of the term; this grant is good, and passes the property to the grantee. Hob. 132. 2 Rel. Abr. 48.

But a man cannot grant all the wood that shall grow upon his fheep that he shall buy afterwards; for there he hath it not actually nor potentially. Hob. 132. 2 Rel. Abr. 48.

A personal truth which one man reposes in another cannot be assigned over, however able such assignee may be to execute it. Perk. feft. 99.

Therefore if a man grant unto another to be his carver, or fewer or chamberlain, &c. these cannot be granted over. Perk. feft. 101.

A guardian in foggay may grant the wardship over to another, but such grant shall not be effectual after the death of the grantor, because by the law of nature such guardianship belongs to the next of kin. 3d. Rel. Abr. 46. but for this vide Vaughan. 180.

If a man gives his horse to another to go to York, he must not will himself, or give it to another to go there. 2 Rel. Abr. 46.

The grantee of a common may grant it over before he hath any seisin thereof by the mouths of his cattle, for the freehold is in him by the grant. 3d. Rel. Abr. 46. but for this vide Vaughan. 180.

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If a man grants a rent may grant it over before any seisin thereof. 2 Rel. Abr. 47.

If a common be granted to husband and wife, and to the heirs of the husband, after the death of the husband, his heir may grant over the remainder, for the estate was vested in him. 2 Rel. Abr. 47.

Leiſe for years may, before entry, grant or assign over his interest to another; for the leiſer having done all that is requisite on his part to devêt himself of the poſſeſſion, and pafs it over to the leiſer, hath thereby tranfered such an intereft to the leiſer as he may at any time reduce into poſſeſſion by an actual entry, as well after the death of the leiſer as before, and such an intereft that the leiſer, his executors, and conſequently may be granted or assigned over before entry. Ca. Lit. 46. b.

A. make a leaf of land to B. for life, remainder to his executor for years; in this case the term vests in B. so that the grantor it over; for as an heir represent

VOL. II. NO. 84.
But where a remainder is limited to the eldest son of Jane S. whether legitimate or illegitimate, and the latter issue a babel, he shall take this remainder, because he acquires the denomination of her issue, by being born of her body, and so it never was uncertain who was designed by this remainder. *Oth. 35.

If a grant is made to a father and his four sons, the grant is good for the apparent certainty of it; but if the father has several sons, or if a grant be made to a man’s cousin or friend, there are void for uncertainty. *Cap. 374.

By an addition we mean names of dignity, which are marks of distinction, imposed by publick authority, and, always make up the very name of the person to whom they are given; and these are of two sorts: 1st, Such as exclude the surname, so that the persons may not seem to be of any common family; and 2ndly, Such marks of distinction 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. *1 Show. 392.

As to the 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. *C. L. 3.

So a grant to a Duke’s eldest son, by the name of a Marquis, or the eldest son of a Marquis, by the name of an Earl, &c. it good, because of the common courtesy of England, and their places in heraldry. *Carr. 440.

So where a conveyance was made of a reversion to Ralph Everet, knight, Lord Everet, and he brought an action of covenant, to which the defendant pleaded, that at the time of the grant he was not cognizant of repudiation per nomem filii; and it was held to be no good plea, for the person is sufficiently expressed by Lord Everet, and the addition of Knight, tho’ false, does not take away the description of the true person. *1 Bulk. 21. *Lord Everet v. Strickland. *Cr. Cur. 240. *S. C.

It is lawful in G. R. and Ireland, by three judges in G. R. where the party fet forth his title to an advowson by virtue of letters patent granted to A. two armigers & potions militis; and upon oyer of the letters patent it appeared, that the grant was made to A. knight, that it could not be intended the same person, because Knight is a name of dignity, but A. is a surname, and hence, a name of worship; 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. *Carr. 440. *The King v. Bishop of Chester. *5 Mod. 297. *2 Selw. 560. *S. C. and see *Lit. Rep. 200. *S. P.

As to grants by and to corporations, there we 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; that yet if there be enough said to show that there is such an artificial being, and to distinguish it from all others, the body politic is well named, tho’ the words and syllables are varied from. *10 Ga. 125. *Gould. 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 the universal church: the name, it is well enough, for the place of the situation is well and sufficiently shown. *Poph. 57. *2 Roll. Abr. 42. *S. 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 curacy, and the name of the feant had been omitted. *10 Ga. 172.

Swif a corporation be instituted 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 distinguish the corporation from all others. *Poph. 57.

It 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 commune Oxon. this is good; for while per se null, non vitatur. *C. Lit. 816.

If a title be the corporation be expressed by words synonymous, it is sufficient; as if a college be instituted by the name of Gardianus & scholars donum five collegii scholarium de Morton, and they make a leaf by the name of Collegii & scholarum, it is good. *10 Ca. 125.

It seems by the better opinion of the books, that a mistake 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 use 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 fet up an avemment contrary to the deed, and contrary to that faction allowed by law to every solemn contract; and therefore if he be implicated by the name in the deed, he may plead that he is another person, and that it is not his deed. *36 H. 8. 16. *Dyer 279. *Owen 107. *C. Lit. 3. *C. L. 358. *64a. *Perk. Jot. 36.

It makes a great mistake to take a Christian name does not vitiate the grant, because there is no repugnancy that a person should have two different surnames, so that he may be implicated by the name in the deed, and his real name brought in by an alias, and then he cannot deny the name in the deed, because he is obliged to lay any thing contrary to his own deed. *3 H. 25. 4. *Roll. Abr. 146.

Afo, tho’ a person cannot have two Christian names at one and the same time, yet he may, according to the institution of the church, receive one name at his baptism, 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-baptism to make double names; yet it doth not force men to abide by the names given by their godfathers, when they come themselves to make profession of their religion. *45 Ed. 3. 22 b. *C. Lit. 3. *2 Rel. Abr. 43. *1 Brown. 147. *Lit. Rep. 182.

So if a man make a leaf by a contrary name to that which by the institution is given, yet the leaf is good; for this does not take effect altogether by the institution, but partly by the dexteris; as if John by the name of Jane leaf lands, admitting that there are differenc names, yet the leaf is good. *2 Rel. Abr. 42. *Hide and Challenor.

If a rent be granted to J. S. or J. D. the grant is void, because a corporation, for the deed is in the disadvantage; and tho’ the deed be delivered 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. *Perk. Jot. 56.

If a rent or any thing else that lies in grant, be to be right heir of J. S. and J. S. alio, this grant is void; for there is no person capable of taking, as answering this description. *Perk. Jot. 52.

For more learning on this subject, see 2 Bac. Abr. and 19 Vin. Abr. tit. Grants.

Form of a grant of an annuity out of lands.

THIINDENTURE 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 receipt whereof is hereby acknowledged, by the said pretences doth give, grant and confirm unto the said C. D. and his heirs, one annuity of, &c. to be received, taken, had, and to be limb ing out of all that meaflurc or tenement situate, &c. therunto.
Grants, for Grandees, or great men, in the Parl. Roll of 6 Ed. 3. n. 5. 6. Et les dic. comm. barus, &c. another grants; which wood is mistranslated by some authors to signify commons. Cowell, edit. 1727.

Graar. To be compelled to pay at reasonable prices, 25 Farm. 1. 4. 5.

Graafheit. Graafing, or turning up the earth with a plough, as we still say the clod is greased or slightly hurt, and a bullet of grafs on any place, when it gently turns up the surface of what it strikes upon. Hence the customary service for the inferior tenants to bring their ploughs, and to do one day's work for their lord, was within the parish of Arcelsten in the county of Oxford, called grafs-hearth, and grafs-burt. See Parochial Antiquities, p. 496, 497. and the Glossary annexed to that work. Cowell, edit. 1727.

Graba, A grove, a coppice, a thicker, a small wood. See also 8. face, suffer no graven or carved Image, or Image of the wood belonging, and every part and parcel thereof; to have and hold the said wood or yearly rent-charge of, &c., aboue mentioned, and every part and parcel thereof, unto the said C. D., and his assigns, for and during the natural life of the said C. D. payable and to be paid in and upon, &c., yearly and ever after, by you and your assigns. And if it shall happen that the said wood or yearly rent-charge of, &c., or any part thereof, shall be bound and unbound, in part or in all, by the space of twenty days next after either of the said days or times of payment thereof, whereas the same shall or of right ought to be paid, as afofd, that then and in such case, and at any time there after, it shall and may be lawful to and for the said C. D. and his assigns, into the said premises above mentioned, or in any part thereof, to enter and distress, and the distresses and distresses then and there found, to take, lead, drive, carry away and impound, and the same in full to demand and keep, with the said wood, and the advantage of (if any be) together with all rights and charges to the same, shall be fully paid and satisfied, and the said A. B. for himself, his heirs and assigns, due covenant and grant to and with the said C. D. his executors, administrators and assigns, that he the said A. B. his heirs and assigns, and all and singular his said officers and agents, and of the said wood and the same, and in manner and form above expressed, according to the true intent and meaning of these presents. And also, that the said megressive, &c., and hereditaments above mentioned to be charged or chargeable with the said wood hereby granted, shall from time to time be and continue ever and ever to be, the subject of the payment for the said wood or yearly rent-charge of, &c., yearly, during the life of C. D. In witness, &c.

Grant of the King. Leaves of small farms may be made by persons aligned by the King, Stat. de Stat. 52 H. 3. 25 G. 15. 5. 6.

His prerogative that advowsons do not pass with a manor, Prærog. Reg. 17 Ed. 2. b. 1. c. 15.

Certain grants of annuities made void, 11 Ric. 2. c. 8.

In a petition for a grant of lands, mention shall be made of the value, 1 H. 4. c. 6. and of what the petitioner has received before, 2 H. 4. c. 2. the Queen and Royal Family excepted, 6 H. 4. c. 2.

No undue grants to be made, 4 H. 4. c. 4.

Annuities granted by the crown to be paid according to their priority, 7 H. 4. c. 16.

Confirmation of grants, 7 Ed. 6. c. 11. 7 Ed. 4. c. 4. 7 Ed. 6. c. 3. 4 & 5 Ph. & M. c. 11. 18 Eliz. c. 2. 43 Eliz. c. 1.

Grantees of lands, &c., that came to the Crown by attainder, shall hold them in the same manner as if there had been no charge or allegation, &c. above mentioned, as in the days and times and in manner and form above expressed, according to the true intent and meaning of these presents. And also, that the said megressive, &c., and hereditaments above mentioned to be charged or chargeable with the said wood hereby granted, shall from time to time be and continue ever and ever to be, the subject of the payment for the said wood or yearly rent-charge of, &c., yearly, during the life of C. D. In witness, &c.
The Stable of a kind small fish, mentioned in flat. 22 Ed. 4. c. 4.

Githrich. (Pacis fratis seu voluntatis) is a branch of the peace, in enim Regis githrichore 100 lb.—mem. Lit. Leg. 15o. cap. 30. Chartis Williamii Conq. Erz. Sancl. Psalmus in Heli. a. d. 50. githrichore, i.e. quad prior tenet placitis de illos quipsum Regis vel libertatis ipsius privatis. Ex Reg. Priorat. de Cekoforu.

Githibrate, (Sols pacis) A sanctuary. See fitbract.

3. By 37 Ed. 3. 5. were merchants that engulfed all merchandise 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 them filled Grocers-Hall. Council, edid. 1727.

Grocers wages. Raisins, ses. prunes, and currans, in three 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 Netherland 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. jiff. 2. c. 4. sect. 15.

Raisins imported to pay but five pounds, and currans fifty shillings for every hundred pounds value, 4 & 5 W. & M. c. 5. 100.

Curans imported in English or Venetian shipping, now exempt from paying the subsidy granted by 3 & 4 W. c. 7. sect. 4, 5. 6. sect. 12. 28 Geo. 2. c. 29. sect. 3.

Every hundred weight of raisins imported pays fifteen shillings, 8 Ann. c. 7. sect. 6.

Importers of raisins what time to have payment of duties, and what allowance for prompt payment, 8 Ann. c. 7. sect. 12.

Landing raisins without entry, or unshipping with a design to land them before payment of duties, what to forfeit, 8 Ann. c. 7. f. 14. 17.

 Duties in what cases to be paid on exportation, 8 Ann. c. 7. fett. 15.

All to be levied, 8 Ann. c. 7. fett. 16.


Gynna (Taleutus, mentioned in 33 H. 8. cap. 10.) Is the name of a servent in some inferior place. Verigton in his Reflexiones 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 bent on foot on errands, serving in such manner as lackies do now. Council, edid. 1727.

Gynnapotter, An officer or superintendent over the Royal gaming-tables; in Latin, written Jucce Rigi junia primarius.

Sylla, A great. Consulla est Rigi una grossa, qui conduct quater denarius de quicquis viro il muliere. Henry Kayvghton, fab an 1738.

Sylla. In grisse, absolute, independent; as formerly a villain in grisse, was such a servile person, as was not appendant or annexed to the land or manor, and go along with the tenure as an appurtenance of it, but was only a personal goods and chattels of his lord, at his lord's free pleasurable and dispost. So adversion in grisse disfirmed from adversion app endant.
Quiddy latis, is great wood, and properly signifies such wood as, in either by the Common law or custom of the county, timber. 2 Per. Jod. 562.

Graffete, signifies a fine, and is corrupt from graffam. For Please, fol. 571, fath thus, Et il est j. K. grant that Villainus in graffe was a servant which did not belong to the land, but immediately to the person of the lord: For an adowson in graffe is a right of, as own not annexed to the fee or manor, but it belonged to the patron himself, distinct from the manor.

Graffite, or of Merchants' Ditts. a den, cave, or hollow place in the ground; also a shady, woodly place, with springs of water. L. Fr. Ditt. 127.

Graffam, is a tribute paid for the ground on which a fish band can go. Cowell, ed. 1727.

Graftsman. See Deft.

Graffam, by 43 Ed. 3. cap. 10, seems to be an engine to ithech woolen cloth after it is woven. Graft halfprize, A rate paid in some places for the taking of every fat, ox, or other unfruitful cattle. Clayton, Rep. p. 92.

Graffiti, Derived from the French grazer, Signifies generally the principal officers of the forest; of whom you may read in the forest records. Cowell, ed. 1727.

Gutta, Gruel, broth, Potage: In the accounts of the cathedral church of Saint Paul in London about 5 Ed. 2. Sanna frumenti ad panem 182. quarter, sanna frumenti 125. quarter, sanna orde ad gutting 135. quarter. Ex Libro Statut. Eccl. Paulinie, MS. fol. 73.

Guadage or Ouadage, (Guadagium vel guidagium,) Ex quod datur allot, ut toti combustor per terram alterius; that which is given for safe conduct through unknown ways, or a strange territory. Sir Edward Coke calls this an old legal word. 2 Jod. 526.

Guadum. See Waldum.

Guanaugium. See Waldnage.

Guard, (Fr. gard, Lat. caudium, A custody or care of defence. And sometimes it is used for those who attend upon the safety of the Prince, called the life-guard, Ut, sometimes such as have the education and guardianship of infants, and sometimes persons are called guardians of a wordship, as droit de gard, gitehine de gard. F. N. B. 130.

Guadianum, (Fr. gardin, Lat. caesus, guardianum,) Signifies generally him that hath the charge or custody of any person or thing; but most commonly him that hath the education or protection of such people, as are not of sufficient discretion to guide themselves and their own affairs, as child en and ideals; being indeed as largely extended as tuter and curator, among the Civilians; for whereas tuter is he that hath the government of a youth, until he come to fourteen years of age; and curator is he that hath the direction and ordering of his estate afterwards, until he attain to the age of five and twenty years, or he that hath the charge of a frantic perdon during his lunacy; we use only guardian for both these: And for the better understanding of the law in this point, we are to observe, that a tutor is either saltitator, or a prater; datus legi Adversa; or laely, legitimus, so quick have three forts of guardians in England; one ordained by the father in his last will, another appointed by the judge, the third catt upon the minor by the law and custom of the land: Touching the first, a man having goods or children, may appoint a guardian to the body or person of his child, by his last will and testament, until he come to the age of fourteen years, and the disposing and ordering and the setting of his estate for as long as he thinks meet, which is commonly to one and twenty years of age. The same he may do of lands not holden in capite, or by knights service. But the ancient law in this case is very much altered by the statute of 15 Car. 2. cap. 24, which ordains, that, "Whosoever his parent hath, or shall have any child of fourteen years of age, or above, he hath the management of the same, and of the revenue of twenty-one years, or any part thereof, at the death of his child, it shall be lawful for the father of such child or children, whether born at the time of the decease of the father, or at that time in utero, or at any time in utero after, or whether such father be within the age of twenty-one years, or not, if the same be executed in his lifetime, or by his last will and testament, in writing, in the presence of two or more credible witnesses, to dispose of the custody and tuition of such child or children; for and during the time he or they shall remain under age, or any lesser time, to any person or persons in possession or remainder, other than the child's relations; and such disposition shall be good against all persons claiming such child, as guardian in sejus, or otherwise, &c. 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 him another guardian, according as he by the Civil law he may have his curator; for we all hold ourselves that we are the Civilians in this case, and that is leo curate nos datur. And for his lands the next a kin on that side, by which the land cometh not, shall be guardian, and was herefore called guardian in sejus. See more of the old law in this case as in 1 Stat. I. cap. 1. And in note Dr. Loudther Legum Ang. cap. 44. Stann: Preren. cap. 24. Old Nat. Breel. fol. 94. and Steene de verbo. varian; from whence you may learn great affinity, and yet some difference between the laws of Scotland and ours in this point. Cowell, ed. 1727.

A guardian is one appointed by the wisdom and policy of the law to take care of a perdon 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 of husbandry and tillage, whom he that came of age he might be the better able to perform those services to his lord, whereby he held his own land. 2 Boc. Air. 672. See 2 Jod. 12, 13, 564, 555.

And therefore Bradton, lib. 2. cap. 38. fol. 86, treating hereof, says, De illis, qui sunt inferiores & infra aestas, & quos operet off sub tutela & cura aliquid... & regere non possunt, & quorum unum debent esse sub facultate Dominii cum terri & tenementis... quos sunt de jicio eorum... & quorum sub facultate parentium & proximorum confugiun- mirum, ut praeda... eff... & quibus daturus caesusque aliquando de jure de diversis... & de aliis tute... & de aliis ad humine. — So Flata, cap. 9. fol. 4. Quidam sub caedea par- rentum & proximorum confugiunmirum, & illis daturus caesus de jure gentium. 127.

1. Of the several kinds of guardians, namely, by the Common law, by capite, and by statute.

2. Who may and are intituled to be guardians; by what authority they are appointed, and of reposing 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 in this also to be a guardian to account, and what allowances he shall have.

1. Of the several kinds of guardians, namely, by the Common law, by capite, and by statute.

2. By whom and for what reason, and in what case, and by what authority, and of what power, and what authority and protection they have in this case.

Guardians by the Common law. There are four kinds of guardians by the Common law, viz. guardian in chivalry, fojes, nature and nurture. Cf. Lit. 88, &
At guardians 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 lai de hominis of him, to such heir his land until he should attain to the age of twenty-one years, and for the performance of his service; and such land had likewise the custody of the body of the infant to breed him up, and inure him to martial discipline, and was therefore called guardian in chivalry. Lit. j. c. 153.

Ca. Lit. 74, 75, 76. 2 rol. 12, 13.

But if an heir female were unnativized, and under fourteen at her accurs's death, the lord was guardian till the infant arrived to that age; also by W except. 2, cap. 22, the lord should have had the land till the child were sixteen to tender convenient marriage to her; and if the lord died within the two years, the law gave the same interest to his executor and executors. Lit. 75, 76.

Wardship was due to the lord in regard to tenare, therefore if the lord had released his seigniory to his ward, or the seigniory had descended to him, he should have been out of ward, for coiffeufa tertiis effeisset. Co. Lit. 75, 76. 2 rol. Abr. 36.

An heir who had been in ward by reason of a tenure in capite, when he came of age must have sold livery, t. 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 had the land till the child were fourteen, for they were unable to tend convenient marriage to her; and if the lord died within the two years, the law gave the same interest to his executor and executors. Lit. 75, 76.

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 alienated it over; and therefore were not at all accountable to the infant when he came of age. Co. Lit. 90.

But this fort of guardian ship being a fort of conflation of a young and valorous age among the Cather: nations to breed them to arms; it was esteemed a great burden, and therefore is now fallen by the 12 Car. 2, cap. 24, by which all tenures by knight-service, and forage in capite, are turned into common feuage, and discharged of homage, livery, premier feisin, wardship, and all other burdens which were law inclined to such tenures, and must per fili marriage & per forse fiin chivalris. 2 B. Rot. 674.

2. By the Common law, if tenant in forage 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 is to descend, shall be guardian of his body and land till his age of fourteen; and although the nature of forage tenure be in some measure changed from what it originally was, yet it is still called forage tenure, and the guardian in forage is still only where land of that kind (as much of the lands in England now are,) descend to the heir within age; and then the heir after fourteen may chuse his own guardian, who shall continue till he is twenty-one, yet as well the guardian before fourteen, as he, whom the infant shall think fit to chuse after fourteen, are both of the same nature, and in both the same office and employment. Co. Lit. 86. 2.

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 lai de hominis of him to such heir had arrived to that age, and for the performance of his service; and such land had likewise the custody of the body of the infant to breed him up, and inure him to martial discipline, and was therefore called guardian in chivalry. Lit. j. c. 153.

Hence the law has invested them not with a bare authority, but also with an interest till the guardian himself, and not his heir financial, but the authority itself, 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 therefore are not to have any thing to their own use, as the guardian in chivalry had. Co. Lit. 90, a.

Guardian by nature, who is the father or mother; and here we must obviate, 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; Co. Lit. 84, 89 E. 4, 5, 7, 8, 9, 11, & 11, 73. 41, 42, 74. 115, 120, 2 rol. 63.

But neither the mother, nor any collateral ancestor could have had the custody of the heir apparent before the lord, for though they may have an action of trepals quae capacitatem & heredem rotisque, yet they can have it only against a stranger guardian in chivalry. Lit. J. c. 114. Co. Lit. 84.

Guardians by curtesy. By the custom of the city of London, the custody and guardianship of orphans under age unmarred belongs to the city. 1 Bat. Abr. 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 justice, 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 fulfill that the accounts were fair, the lord might have rescinded to another. This proviso the Chancellor hath taken from inferior courts only in Kent, where their customs are continued; but the custom is not used even in Kent this day, because the lord in giving tutors do it at their own peril in the account; and therefore every man thinks it dangerous to impress it. Lit. 611.

This guardian appointed by the lord is to have the same allowance and no other, with the guardian in forage 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 copyhold lands descend to an infant within the age of fourteen years, the next of kin, to whom the lands cannot descend, shall be guardian both of the infant's land and estate, if by the custom of a manor it does not belong to another. 2 Rol. Abr. 40. 2 Lutw. 1185. 8 P. f. said to be refolved.

And therefore, if a copyhold defend to a lunatick, or an infant within the age of fourteen, the lord, without a special custom for that purpose, hath no power of appointing a guardian. Hib. 215. Hot. 16, 17, 2 Lutw. 1185.

Guardians by statute. By the Common law no person can be appointed a guardian, because the law had appointed one, whether the father was tenant by knight-service or in forage. 3 Co. Lit. 37. 2 rol. 62.

The first statute, (1 Sid. 350b.) that gave the father a power of appointing, was the 4 & 5 E. 3, &c. cap. 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 poli- cie, custody, or guardianship, and against the use of such maid or woman child, or of such being 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 life-time, hath or shall appoint, assign, bequeath, give or grant the order, keeping, education and governance of such child, or any of them. 

In the construction of this statute it hath been held, that if two persons are appointed guardians by authority of this statute, and one of them dies, the guardianship will not survive, because the statute gives an authority to a special purpose, and enlists the ravisher criminal within the statute. 

2. That in case of devise of such custody or guardianship made by or during the life-time of the testator, the testamentary power may be confused. 

The 15. Car. 2. cap. 24. enacts, "That where any person hath or shall have any child or children under the age of twenty-one years, and not married at the time of his death, it shall and may be lawful to and for the father of such child or children, whether born at the time of the decease of the father, or at that time in utero feri more, or whether such father be within the age of one and twenty years, or of full age, by his deed executed in his life-time, or by his last will and testament, in the presence of two or the father of two 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 foro, or otherwise; and such person or persons to whom the custody of such child or children shall be devised or devised 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 so devised or devised, shall and may take into his or their custody, to the use of such child or children, the profits of all lands, rents, and issues,属于ments of lands or children, and also the custody, tuition and management of the goods and chattels and personal estate of such child or children till their respective age of one and twenty years, or any lesser time, according to such devise aforesaid, and may bring such action or actions in relation thereto, as by law a guardian in common forage 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 into possess, and is the owner in all cases of the interest of such child or children, and differs only as to the modus habendi, or in a few particular circumstances; as, if the testator shall explain it by a longer time, viz. till the heir attains the age of twenty-one, where before it was but to fourteen: feclinly, it may be by other persons held; for 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 the statute, &c. as an act for the custody. 

3. That an infant hath the same remedy against a testamentary guardian, as he had against a guardian in foro, tho' the statute speaks only of remedies for the guardian. 

4. If the father being of age devise his lands to y. 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 creating 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 y. s. and mentions no time, either during his minority, or for any time after, 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 minis habendi cupididiam is changed only as to the perfon, and left the fame as it was as to the time, but if above fourteen at the father's death, then the devise of the custody is merely void for the wrongfulness of the act did not intend every heir should be in custody until one and twenty years, and tamen, sed ne distinet: 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 left by the father, but of all lands and goods any way acquired or purchased by the infant, which the guardian in foro had not. 

7. That this guardian cannot affign or transfer the guardianship over to another, neither shall it upon his death go to his executors or administrators; for tho' he at an interest, yet it is an interest joined with a trust, with which the testator might think those persons incapable of executing, and 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 successors shall fill up continue guardians, for from the nature of the thing, the authority must be joint and equal, especially if, in the nature of the case, there were other, the more guardians were appointed for the security of the infant, the less secure it would be, because upon the death of 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 him the guardianship, the Lord Chancellor may appoint a proper guardian. 

9. Alfo if a person appointed guardian pursuant to this statute, becomes a lunatick, or is otherwise incapacitated to execute the trust reposed in him, or if he abides the truth, by doing any thing prejudicial either to the perfon 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 such 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, do not seem to be clearly agreed.


10. That a coheir is not within the statute to dispute of the custody of his infant heir, because of the meannes of his estate, and the prejudice that would accrue to the lord of the manor; and therefore the lord, or those intituted by the custum, shall have the custody of him. 


And note that both by the 4 £ 5 & 6. Ph. 5. M. and by this statute, there are express savings with respect to the city of London and other towns, as to the custody of orphans. 

1 Sid. 353. 

11. if he 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 foro but where lands of that nature defend to the heir. 

Ca. Lit. 88. 2 Med. 176. 

Therefore such a man died of a debt-charg, a common, or such-like inheritances, which lie not in tenure, and (dispose not of the custody of his child,) he 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 be defend, should have the custody of him, and whoever takes the rent, &c, is chargeable in account; but he has any force land, the foage shall take the rent charge; Co. in custody, Ca. Lit. 87.

So the wife's heir shall not be in ward during the life of her brother for the estate, because of his continuance of his wife's estate, the defendant to the heir is interdicted.

F. N. B. 143.

By the law, the next of blood, to whom the inheritance can't be defend, is entitled 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 foage, &c for convey, where lands descend from the mother; but the Civil Law appoints the guardian that is nearest next, which our law says is committitur even haps. Co. Lit. 87.

If the younger brother die feized in tail, leaving issue under fourteen, the eldest, not the middle brother, shall be his guardian in foage, 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 feizes 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 throws 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. feized 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 body of 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 for convey. Co. Lit. 88. 8.

If a woman hath issue a son by a former husband, and she marries a second husband, feized of foage 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 foage, as next of kin, to whom the inheritance can't be defend. Co. Eliz. 295. 2 Ad. 171. Mor. 625. 2 Jas. 17.

If A. be guardian in foage of B. under fourteen, he shall be guardian in foage of another infant whom B. ought to be guardian of, as being his next cousin per curiae dict, and an account lies against him. Co. Lit. 88. 8.

An infant, idiot, lunatick, non comper, one blind and dumb, deaf and dumb, or leper removed, can't be guardian in foage. Co. Lit. 88. 8.

It is clearly agreed, That the King as patron patriae is universal guardian of all infants, idiots and lunatics, who can't take care of themselves: and as this cafe can't be excercised 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 Chancery is the only proper court, which hath jurisdiction in appointing and removing guardians, and in preventing them and others from abusing their power or effectes.


And as the court of Chancery is now invested with this authority, hence in every day's practice we find the chancellor's order to be 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 peticious or motion, for the provision of infants during any dispute herein; likewise guardians removed or compelled to give security; they are likewise punished for abuses committed on account, and censured. Care taken to prevent any abuses in them in their power or effectes, all such wrongs and injuries being redressed a contempt of that court, that by an established jurisdiction the protection of all persons under natural difficulties. 2 Ily. 177.

But it is clear, that the ecclesiastical court hath not authority to refer to a guardian, or offofimentary guardian; and therefore where Sir Henry Wood having devolved the guardianship of his daughter, by his will in writing, according to the 12 Car. 2, to the Lady Chelyer his sister; the Dutchess of Cleveland, to whom the daughter, being about eight years old, was committed, pretending that Sir Henry Wood by word revealed this disposition of the guardianship, fixed in the Prerogative court to have this miscarriage of cedex 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 are but authorities; if the same be not referred to the nature or not. 1 Kent. 257, Lady Chelyer's case.

3. Of the time and manner of appointing a guardian; and of the guardian's interdict in the body and lands of the ward, and his remedy for the same.

The authority of a guardian in chivalry did not determine until the heir, if a male, came to the age of twenty-one years, because it was provided, that till that age he was not capable of doing knight-service, and attending his lord in the wars; the guardianship of an heir female determined by all the laws at fourteen years at Common law; by Wm. P. 1, the lord had the wardship till the attained the age of sixteen, to tender her convenable marriage; the authority of a guardian in foage 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. 103. 2 Ily. 125.

If a guardian in foage die, the guardianship shall go to the next of kin of the infant, to whom the inheritance can't be defend, and shall not go to the executors of the guardian, because they can take nothing but what the teltator had to his own use; besides, the law gives the guardianship to successive lads as are performed have most affection for the infant; and therefore will not intrust executors with it, who may happen to be strangers.


If a femme 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 foall at the same time be under the power of another guardian, 2 Ily. 260.

If a femme guardian in foage marries, the husband becomes guardian in right of his wife; but if the devil the guardianship cured by the law, and the first go to the next of kin to the infant.

Plow. 293. a. Co. Lit. 89. a. S. P.

A guardian in foage shall not forbear his interest by outlawry or attainder of felony or treason, because he hath nothing to his own use, but to the use of the heir.

Co. Lit. 88. b. Gaud. 316.

It is said, that in Chancery a guardian can't be otherwise appointed than by bringing the infant into court, or his praying a commissary to have a guardian assigned him.

Afr. Eq. 260. Lloyd and Caron

Regulary an infant is to sue both at common law and in Chancery, by his prochein any or guardian; but he must always defend by guardian, who is to be admitted by the court. Vide Head of Infants.

The respective courts in which the suit is commenced, must affig a proper guardian to the infant; and therefore if an infant is sued, the plaintiff must move to have a proper guardian assigned him. Stil. 269. Brid. 74. 1 Ily. 322.

And as an infant can bring his bill but by prochein any, so he must take care of it; for if the bill is dismissed, the prochein any must pay the costs thereof.

Afr. Eq. 73. Aventh and Cradick.

Where a bill is brought against an infant (if in town) he has the guardianship of it as to himself, and he can appoint a guardian assigned him, by whom he may defend the suit; if in the country, he sues out a commissary to assign a guardian, and put in his answer; and whether he pleads, answers or demurs,
demur, fill it must be done by his guardian; for if it is the plea, answer or defence of the infant, without doing it, it will be irregular.

But where the infant neglects to appear, or to have a guardian affigned, it is a motion of course (he being in contempt to an attachment) to pray for a meeinger to bring him into court, and when he is there the court alway, should proceed; for this can be done against a seer of the thing who is an infant, and whose person is saced. 2 Dac. Atq. 601 See Privilege.

As the law hath invested guardians not with a bare authority only, but also with an interell till the guardianship ceaseth; so it hath provided several remedies for guardians against those who violate that interest; and therefore at Common law there were remedies both of tural and poftflly, to recover the guardianship. 2 Inl. 90. 9 Cc. 72.

As at Common law there was the writ De ostitio terrae et hereditis, called the writ of right ward, whereby the guardian recovered the custody of body and lands; but if the ward were married, then the guardian was driven to his action of trepafs, quere f e intrinfi maritaggio non fatisfidt; but this was remedied by the statute of Martin, cap. 6, which provides, that in the writ of right warddef the plaintiff shall recover the value of the marriage. 2 Inl. 90.

Alfo at Common law an action of trepafs lay for the guardian, which was a poftflory action; and in this at Common law he could only recover damages for his ward, and not the ward itself; but the statute of Mat- fion, which provides, that in the writ of right ward the plaintiff recovered the body of the heir, and not damages only. 2 Inl. 90, 430. 9 Cc. 72. Huf- fuy's cafe. Hob. 94.

If upon a habiet corpus an infant be brought into court, and it appears, that the question is touching the right of guardianship, the court can't deliver the infant to the guardian, for he may have a writ of rafivation of ward. 3 Kel. 446.

4. What things a guardian may lawfully do, and which shall bind the infant.

From the authority and interell, which the policy of the law has invested guardians with, it appears, that a guardian may do several acts which will bind the infant, fuch as making leaves for years, which he may do in his own name, and such leaves may maintain efjetment thereupon. 4 Co. Lit. 88, 89. Lit. Est. 123, 124. In re J. in Chancery, Eng. B. 27.

Therefore if a guardian in focage 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 bare out of the interell of the guardian, or to be misconducted 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 fuftiff after the authority itself, by which they were done, is determined; and consequently the infant is bound by them. If, by the bearevac is the name of the infant, and hath nothing to do with his lands. Bro. Tit. Gard. 70. Tit. Gar- den, 19. 2 Rol. Atr. 41. Brijlen and Hufsey. Cra. Juf. 55. 98. Skepland and Rider.

A. lest lands to B. for four years, and died, and the land being held in focage, and the heir under four- cests, the infant got in the land in focage by indenture, before the first lease was expired, lets the same lands in his own name to B. for eight years: and if by this acceptance of a new lease from the guardian in focage the first lease was fu- rendered, was the question; and 'tis said to be holden by the court, that it was forfended; or if it could not be properly cashed, for want of a revocation in the guardian in focage, yet they held, that at last the first lease was thereby determined by admittance of the leflee's own children by marriage, which if the first should fland in the way he could not do. Com. 158, 372. 4 Len. 7. Owen 45. 56. Willis and /his head.

If a woman who is guardian in focage to her fon marries again, and her husband and the join in a lease of the infant's land, the lease upon the steps of the marriage becomes void; for the interest in the lands was in right of the infant, and therefore shall not bind her, as those acts which in the soil with her husband in parting with her own poffeffion. Plow. 293. Othens's cafe.

A guardian in focage may grant copyhold eflates in his own name, and such grants shall bind the heirs, 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. Cra. Juf. 55. 99. Poph. 127. 2 Rol. Atr. 42.

Alfo it hath been resolved, that a guardian in focage may grant copyholds in reverson according to the cust- ion of the manor, and that such grant shall be good; though they come into poftflion during the non-age of the infant. Mich. 8 W. 3. in C. B. Lade and Barker.

A guardian in socage in whom any may make partition in be- half of an infant, if equal; for the same was not only void, but the law to take care of the inheritance of the infant; and this separation and division of his part from what be- longs to another is so far from being a prejudice to the infant, that it is really for his benefit and advantage. 2 Rol. Atr. 28.

As the authority and interest of a guardian extends only to fuch things as may be for the benefit and advantage of the infant, and whereas he may give an account; on this foundation it is held, that a guardian cannot preferit to any benefice in right of the heir, because he can thereby make no advantage of the infant (for that would be enmity); and consequently has nothing therein whereby he can give an account, and therefore the infant himself shall prefent thereto. Ca. Lit. 17. k. 89a. 29 Ed. 3. 5.

But yet a preferment made by the guardian in the name of the heir, is a good title to the heir in quere im- pedit. 42 Ed. 3. 17.

In ejecution the cafe was, that one A. devised land to B. his fon in tail, with divers remainders over, and makes one C. over-leer of his will, and willed that he should have the education of his fon till he came to twenty-one, and to receive, fet and let for the faid B. the faid land, and for his fon, and the guardian is to account to the faid B. being allowed his charges, &c. C. makes a lease for seven years in his own name, with re- ferervation of rent to himself, and this lease by computa- tion was to continue half a year after B.'s attaining his full age, and if this lease was good for any part of the term was the quifton, C. being dead, and B. not yet of age; and it was argued to be good for the whole term, or at leaft 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 interell in the land, and not a bare au- thority only; for then all leaves much be made in the name of the tenant, and make such prudence as whenever he thought fit, which the tenant never in- tended to impower him to do; but Popham, Clench and Fenner held, that as this devise is, C. was but a guar- dian for nurture, 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 lease was void; from which cafe it appears, that if the authority had been enough to enable him to make leaves for years, fuch leaves 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 fuch cafe could not when he came of age have avoided them, as he may leaves made by his guardian in focage, if he thinks fit; be- X x cau
cafe the title would have been in by the will and devise, not by the guardian for nature. 
If a guardian borrows money of A. to pay off an in-
cumbrance on the infant's estate, and promises to give A. 
security for his money, but dies before it is paid off, this 
A.'s money is applied to pay off the incumbrance, yet the 
court will decree him satisfaction out of the infant's 
estate; but if the sum disbursed excesses 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 in-
fant's estate. 2 Fer. 450. Hoper and Eybe.
A guardian is 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, 
300 l. 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 when he came of age he should 
again inherit, and allow that money on a count; the 
infant dying in his minority, it was held by my Lord 
Chancellor, C. B. Akinin and J. Latyshe, against 
the opinion of the Master of the Rolls, that this' neither 
the heir nor administrator of the infant were intitled to 
the land, yet the guardian must account for the 300 l. 
the sum raised out of the infant's estate: 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 descend to the heir; and that the object, that 
an infant may make a will at seventeen of his personal 
estate, but not of his real, was not incorporated. 
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 devolved to a remote heir, and then 
the mother would have had back the money; but the 
court denied her any relief. 2 Fer. 193. Zabuc and 
Lloyd. v. Broughton. 
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 proof, so as 
to have an opportunity to take depositions, and to examine 
 witnesses to prove the matter in question. 
Ch. 79. 3 Mat. 259. 1 Show. 89. S. C. Eydeson and Potty. 
An estate having devolved to an infant subject to 
cumbrances; and the question being, whether a guardian 
might, without the direction of a court of equity, apply 
the goods seized to discharge the incumbrances, or the 
interest of them, or whether they should not be accounted 
personal estate, and for 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 principle for a stranger to cut down timber 
trees, or to proftrate 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 withhold 
the wrong-deer, this shall be taken in law for his con-
tent, according to the rule, Qui non prohibet proib 
hibitionem suam in se ducit. But if such ward be 
discharge be done without the knowledge of the guardian, 
or with such force that he could not withhold, then 
ought the guardian to caufe an affize to be brought 
against such wrong-deer, by the seisin, wherein he shall 
recover the freedom and damages for such wrong and dif-
truction. 
And if the heir brings his action of wafle within age, 
the judgment, according to the statute of Gleichen, cap. 3, 
shall not only be to recover deminuendum, but the guar-

dian shall lose the whole wafle, and yield to the heir 
the single damages, if the wardship be not sufficient to 
fancy the damazes. 2 l. 405. 
If the guardian doth wafle, and after affregate over his 
interest, an action of wafle both against the grantor in the 
tenant. 4 l. 305. 
Also if the wafle be committed to bear the time of the 
infant's coming of age, that he could not conveniently 
bring his action in wafle during his minority; yet after 
the determination of the guardian's interest, if recovering 
his actions of wafle, and in such case, as he cannot recover 
the wardship which it ended, he shall by the statute of 
Gleichen recover table wafles. 2 l. 306. 
By 3Wilm. 2. cap. 3. If like for years, or guardian 
allows the infant's estate to run to waste, the freedom 
shall be to sue of noveldiffe, and both the fec lfe and 
fee f. shall be esteemed difie, and the survivor of 
them shall be liable to this remedy. So, if either happens 
to die, he that survives may be confined a diffe, and 
as such liable to this action. 2 l. 412.
Not only guardians in chivalry, but in fegale and by 
muture, come within this law of Wilm 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 foftiment from his ward, 
the ward may bring an affize against him as a diffe; 
for the guardian acts contrary to his duty, when he affents 
to any alienation made by his infant; for its duty to 
keep the inheritance of his ward, and to deliver it 
up to him at full age, and not to bring it into his own 
If a guardian, after the full age of the heir, continues 
to administer the infant's estate, and an affize of 
defcription lies against him by the heir; but he cannot be deemed 
a diffe, because he does not actually outhe the heir of 
his freedom, which is required in a diﬀen, but holds him 
out by an intermediate entry between him and his ancestry, 
which makes the diﬀenization between an abatement and 
section. 2 l. 547. 2 l. 572. 2 l. 584. 
If an infant appears by guardian, and follows a recovery, 
this shall bind him; and one of the reasons hereof is, that 
if the recovery be to the prejudice of the infant, he has 
his remem for it against his guardian, and may reimburse 
himself out of his pocket, to whom the law had com-
mitted the reversion. 2 l. R. 735. 
By the Common law, guardians in fegale are account-
able to the infant, either when he comes to the age of 
fourteen years, or at any time after, as he thinks fit. 
C. L. 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 neg-
ligence, be shall be discharged thereof upon his account; 
for he is in the nature of a bailiff or tenant to the 
infant, and undertakes no otherwise than for his diligence 
and care. 2 l. 215.
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 diﬀen on account of his wrongful 
entry upon, and actual outher of such infant, or else 
diffem the wrong, and call him to an account as guar-

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If a guardian takes a bond for the annuities of rent, he thereby makes it his own debt, and shall be charged with it. 2 Chon. Reg. 97. Wall and Backly.

I. For 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. 243.

The receiver's infant's infalvtes 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 infant'sancy. Merc. Ed. 1297.

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. Prev. Chon. 533.

For more learning on this subject, see 14 Vin. Abp. tit. I. England, apointed a magistrate or governor over these Eastern parts, whom they called Cornutum Iterators Saxonum pro Britanniam, having another that did bear the same title on the opposite part of the sea, whose office was to fortify and furnish the sea coasts with munition against the incursions and robberies of the Barbarians; and that was more for the same reason, that our Eastern parts was first crested among us, in imitation of that Roman policy. Cowell. ed. 1727. See Cinque ports.

Guardian of the peace. Cap. 57. See Constables of the peace.

Guardian of the spiritualities. (Coepis spiritualium) is one to whom the spiritual jurisdiction of an, diocese is committed, during the vacancy of the see. 25 Hen. 8, 21. And the guardian of the spiritualities may either be guardian in law, orjure magistratus, 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 spiritualities had 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 infirmiting clerks preferred; but such guardians cannot as such consecrate or ordain, or predest to any benefice. Wood's Hist. 26. See Bishop.


Such provisions relating thence engraved with the excise, 2 W. & M. jf. 2 cap. 9. fol. 12. 4 Ann. cap. 6. fol. 34.

Goods of their own growth may be imported duty free, 3 Geo. 1, c. 4. f. 5.

Salt imported from thence to pay at foreign, 5 Geo. 1, c. 18. ef. 11.
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Sect. 19. Juries of peace in their functions, and rewards of kets, have power to bear and determine those offences.

Sect. 20. Penalty of 20l. on juries concealing offenders.

Sect. 22. Forfeitures arising by this act shall be paid for within one year by the King, and within five months by common pardon, otherwise they shall be lost.

Sect. 24. 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 bak. corp. exceptions were taken to the return. 1f. That the caption is taken before J. S. and T. N. ad pacem confection, without laying (juries) and so by what appearance the same is good. 2dly. That there shall be a conviction by oath, where the statute lays (proof and examination) which must be intended by jury, 3dly. That it does not appear, that it was before the next justices, 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 punished before it is proclaimed, which Tishden J. said, ought to appear in the return, (though the statute perhaps was proclaimed one hundred years since). 1 Sid. 419. No judgment. Trin. 21 Car. 2. B. R. The King v. Saunders, 1 Saund. 263. S. C. says, that it was upon the question of the exceptions, that the conviction was to be coram T. B. & G. B. or. Aubus jiffic. dominii regis ad pacem in com. preditos conferment, But that the word (affin.) was omitted. For it ought to have been conferenda, affinatis. And so it does not appear, whether the said justices were aligned to keep the peace or not. The reporter adds a note, that the conviction was before two justices of peace, but the statute gives authority to one justice alone, being the next justice of the county where the offence is committed, to commit the offender for the forfeiture, but that here it does not appear whether either of the said two justices was the next justice of the county, or whether the other exception intended to be moved; but the conviction being qualified for the exception aforesaid, this exception was not moved, and that he was of counsel with the defendant. Vent. 33. Ann. But S. C. reports, that as to the words (upon due examination and proof before a judge of peace), it was refused, that that was not intended by a jury, but by witnesses, and that no wit of error lies upon such conviction: And that an exception was taken, because it was coram J. S. judge of the peace, without adding non ad diversas fiuasiones, transferrantos, &c. advandis, affinatis, and that the court agreed it ought to be in return upon conviction, to remove indults taken at former assizes, and otherwise of convictions of this nature; for it is known to the court, that the statute gives them authority in this case. Vent. 33. Trin. 21 Car. 2. Ann.

A person being brought before the next justice of peace in the county where, &c. for shooting with halflust in a hand-gun, who, upon examination finding it true, made a record thereof, and committed the party to prison, 'till he was transported 10l. vis. 5l. for the informer, and 5l. to the King. This record being certificated upon a babus corpus, it was held by the whole court, that if the justice of peace does not observe the form preferred by the statute, it is void, & coram non ju:s, and needs no writ a fieri, but if he acts according to the statute, then neither B. R. nor justices of peace, can redeem it, or let the party at large. 1750. Hill. 3 Car. 3. B. R. Cafe's cafe.

The judgment on an indictment upon this statute was, that the defendant seditiis domini regni, &c. fecem libera- rum, &c. where the words should have been seditio liberae gentis. Instead of liberae gentis for thue and other reasons the judgment was reversed. Rynm. 378. Trin. 32 Car. 2. B. R. The King v. Aliph.

The conviction was for having a gun in his house, and this being excepted to, because the statute is usf.§ keep in his or her house, and perhaps it might be lent him, and the words of the statute ought to be purged; f°' the conception

Counsel-papers, otherwise called fudian paper, is mentioned among drugs and poisons to be garbled, by 1 Jus. c. 19.

Cultars and half guineas, may be imported, 8 H. 3. c. 1.

Cule of August, (Gula Augi'i, Wy. 2. cap. 30. 27 Eliz. 3. cap. 3.) De folio Saxtoni, &c. 62, alias gula de Augusti, And Plowden, fol. 316. caie of mines.) Is the day of St. Peter ad vicinola, which was wont to be, and is still celebrated upon the first of August, and probably called the gula of August, from gula, a throat. The reason we have in Dunsian's Rationale Dictionarium, bk. 7. cap. De solio lantio Pietro ad vicinola, where he saith, That one Quirinus, a Tribunus, 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 that he should borrow or fee the chains that St. Peter was chained with under Nero; which request obtained, his said daughter's disease was cured of her defence, and Quirinus with his family baptized. Tune dictus Alexander papa, fith Durand, bu ffimum in calendis Augusti celebrandum infirmit. & in honour hearit Petri ecclesiam in urbe fabricavit, ut ipfa vincula repugisset, & Ad vincula nominaret, & calendis Augusti dedicaretur. In quas jubvstitas populos supplytus in vincula habeat exciscere. So that this day which before was only called the calendis of August, was upon this occasion termed indirectly either from the instrument that wrought the miracle, St. Peter's day ad vicinola; or from that part of the maid wherein the miracle was wrought, the Gula of August. See Hadvian. de Oc. A. 1358. Augustinianum fictum ficta in Hoc die inter Hook-day & Gulam Augi•: Rentiae Manriri Regalis de Wy. Cowell, edit. 1727.


Gulnis, Taxum, The hook upon which the hinge turns. Cowell, edit. 1727.

Gulsum, Gulsumus, The hook upon which the hinge turns. Cowell, edit. 1727.

Gulsum, Gulsumus, The hook upon which the hinge turns. Cowell, edit. 1727.

Sect. 33 Hen. 8. cap. 6. fel. 1. enacts, That no man shall flock in a house to keep in his house a hand- gun, cross-bow, hagbut or demi-hagbut, unless his lands are of the value of 100l. a year, in pain to forfeit 10l. for every such offence.

Sect. 2. Gt. 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-gun of the length of one yard, or hagbut, or demi-hagbut of three quarters of a yard; so may the owner of a flipp, for the defence of his flipp, and also he that dwells two forlings or houses of a town, or the owner of a house of the same debt, and the lady that may flock at any wild beast or fowl, save only deer, hert, hooved, partridge, wild swan or wild eike.

Sect. 5. None may license his servant to shoot, except his game keeper, on pain of 10l.

Sect. 12. 13. Gunsmiths or merchants may keep guns by them, offering the lengths aforesaid.

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. It shall be lawful for any person to convey the person offending against this act before the next justice of peace; who, upon due examination and proof, shall have power to commit him to prison, there to remain 'till he has satisfied the penalty; which in this case shall be divided between the King and the party that so takes the offender.
GUN

Volon was quashed. 1 Sow. 48. Trin. 1 W. & M. The King v. Lovelock.

The conviction was non kilnaght 100 l. per annum, and did not stay when; and this was excepted to, because it may be that he had committed the guilt, but he kept a gun, but not when he was convicted; to which it was answered, that the words were as much as to say, the conviction is quashed.

The defendant was non belles terre, & c., excepted on, and referred to the time of the indictment, and not to the pleading; the judgment for that and other reasons was reversed. 3 Mod. 285. Poph. 2 W. & M. The King v. Smith.

The defendant was made a bankrupt, and a quo warranto was brought in the King's Bench. 1 Mod. 71. In the case of the King v. Asp.

T. B. was constituted special bailiff to serve an execution in debt on a judgment, and ferrying a refous, carried with him a dog; whereupon, the defendant, being a justice of peace, made one of his servants to go and search him, and finding him armed brought him before his magistrates, being the next justice of peace, who by consent was appointed to examine the cause. It was held to be illegal. But, on a hawson corpus, the legal march was no offence for a thief or his ministers in executing their office to carry such a hand-gun, and that a dog was a hand-gun within this statute. 1 Car. 2. 1 B. R. The King v. Asp. 1 Id. 4 Mod. 51. in the case of the King v. Asp.

The defendant not having 100 l. a year, did shoot in a gun in February, and in March following was carried before a justice of peace, and by him convicted of this offence. It was moved to quash this conviction, because it was before a single justice, who had not power by the statute to try causes in a summary way, unless the party is brought before him, and upon view of the offence committed, which was not done in this case, and therefore it was ordered to have a cause why it should not be quashed. 4 Mod. 147, 148. Trin. 4 W. & M. The King v. Bullock. 1 Blow 307. 2 Trin. 4 W. & M. S. P. The King v. Litten.

An indictment will lie on this statute before the justices, though this hath been formerly doubted; because though the justices have power by the general words of their commission to punish offences against the peace, yet flooding is not such an offence, for it is only a defect of the duty of watching against such who flow in a gun. 32 Geo. 3. C. 1. 47. page 143.

Gunpowder. By Hat. 10 Cor. 1. c. 21. All persons may make and sell gunpowder, and bring into the Kingdom salt, petre, brimstone or any other materials for the making of it. By Stat. 1 Jac. 2. c. 8. sect. 3, it is enacted, That if any person shall obtain a grant for the sale or making, or importing of gunpowder, he shall incur a penamance.

By Stat. 2 Geo. 2. c. 29. A bounty is granted on exporting British gunpowder, but to be abated if duties on salt-petre cease. By Stat. 1 Geo. 1. c. 26. sect. 4. No person shall carry in the streets of London or Westminster, or the suburbs thereof, more than twenty hundred weight of gunpowder at one time; and all gunpowder carried in the said streets in any cars or carriages, and the barrels clothe jointed and hooped, and put into cases of leather or canvas, and the said barrels being made by man or horse shall be put in cases of leather or canvas, and entirely covered with: And if any such to be carried otherwise, it shall be forfeited, and may be seized by any person to his own use, the offender being thereof convicted before two justices. By Stat. 11 Geo. 1. c. 3. sect. 3. If any person shall work with any iron hammer plated with iron or steel in any warehouse or place while any gunpowder is there, he shall on conviction within one month, be 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 in hard labour not exceeding one month, not less than fourteen days.

Stat. 5 Geo. 2. c. 20. sect. 2. No matter of any vessel outward bound, shall receive on board any gunpowder, either in merchandise or there for the voyage, (except for the King's service,) on the Thames above Blackwall, upon pain of five pounds for every fifty pounds weight, and fo in proportion.

Stat. 3. And the matter of every vessel coming into the Thames, shall find all the power on board, either at the first arrival at Blackwall, or within twenty-four hours (if the weather permit,) or he comes to a color 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 leazed with ball, or fire any gun on board above Blackwall, before his arrival, or after un-lenting, he shall forfeit for such gun loaded five shillings, and for such gun fired ten shillings.

Stat. 5. And the corporation of Trinity hoofe at Den- ford Street, may appoint a person to inspect vessels; 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 on complaint in ten days summon the offender, or after oath made of the offence, not more than twenty-four hours, for apprehending him, and on appearance or contempt may convict them either by oath of witness, or confession, or his own view, and levy the penalty by distress, and if not redeemed in five days, by fine; for want of distress he shall be fined for three months, or till paid, and persons aggrieved may appeal to the next King's bench.

Stat. 15 Geo. 2. c. 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 any house, or in bounds, or in yards, or within thirty miles of the Tower, or of St. James's, or of the Thames, except in vessels passing or remaining detained by the weather, or other causes loading or unloading, or going 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 informant, may issue his warrant for apprehending any person to search in the day-time for dangerous quantities of gunpowder, and break open any place, if there be occasion, and the searchers may feize, and may remove the same in twelve hours out of the said limits, and detain the same till it be determined in the courts, or if any further order be made thereon.

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. c. 38. sect. 1. No person shall keep gunpowder for more than twenty-four hours at any one place, any quantity of fire gunpowder not exceeding one hundred weight, 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 place, a greater quantity than three thousand pounds weight in any house or other place.

Vol. II. No. 85.
of those three nations or people who left Germany, and came to inhabit this island. In Lib. Edw. Confess. cap. 35. we read, "Galli voce familiae, com romanis, Iuliji, in quo regni, fiant cornug: quorum, fiant propriis, &c."

Cutten. The gout. Cowell, edit. 1727.

Cuttena. A gouty or spout to convey the water from the leads and roofs of churches. — Cutten is species plantij fanguis magnus placens facient factorem in ast superiores ecclasis, et punctum familiaris facient de tribulatione fpeculorum, ait ecclesiis externis, ut plebis liberam florent haben per guttulas nec ampullas. — Liber Statutorum Ecel. Paulum London. MS. fol. 41 a.

Cutten-sil or Cutten-silis, is a tile made three corner-wide, especially to be laid in gutters, and at the corners of tiled house and cow-houses, &c., Ed. 4. c. 6. a. 29.

City, (Tommas.) His executors how incorporated for the management of his charities, 16 Ed. 1. c. 12.

Cutte-merch, 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, edit. 1777. See Chartier and Lardirte.

Cuttlow. (Guilliamus, from the Sax. Cuthul, i.e. patriolum, et iis, ibes, i.e.) A place of execution. Lucus judicii seu accidens judicii. Ommas galliowta, id ef, occidenlos loca, titular Regis just in fide ac. I.L. 1. cap. 11.

Cuwp, Cutfia, (Fiamium.) Were properly such goods as felons or thieves, when pasued, cast down and left in the highway, which became a ight to the King or lord of the manor, unless the right owner did legally claim them within one year and a day. — Recognition of militibus & libris omnibus, quid ad nos sita & gwas, ita: ita & fatua reditum nihil sibi the gwas of Erniet, silectis post ear quinque percellis. Pars. Antig. p. 10. where the word signifies only stray-cattle. See Cutfia and Strap.

Cutpitt. It was founded by injunction upon an Ad quod damnum, 13 Ed. 3. n. 12. that there did belong to the liberty or hundred of Pathebouche, in cam. Was a certain court called gypit held every three weeks. Cowell, ed. 1727.


Cutpits. See Egyptians. — Cutpits were kept to a part of wandering monks, who left their own cloister and visiter several others, pretending piety. Mut. Parj. p. 490.

Cutpits. (Fr. Touss.) In Law-French signifies a Jew. — Ex que vol gvy vo de accor en avant tel manere de diser. Provisiones de Judicinium, 53 Hen. 3. n. 11.

II.

Habar. Copps, Is a writ that lies for the bringing in of a jury, or so many of them as refuse to come upon the matter facieus, for the trial of a cause brought tointelligence. Old Nat. Breol. fol. 157. See great diversity of this writ in the table of the Register Judicial, verbo habres, and the New Book of Entries, verso cowen. Cowell.

Habar. Copps, Is a writ which a man,indicted of a trefpas before judges of peace, or in a court of franchie; and being apprehended for the fame, 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. 290. And the order in this case is, first to proceed a constietor out of the Chancery directed to the said judge, for the remaining
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 to a day, Arg. * Act. 81. but finds divers causes, 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 superior jurisdiction, which hath authority to examine the legality of such commitment, and on the return thereof either bail, discharge, or remand the prisoner. * 196. *B. 366. But's cafe.

The habeas corpus ad faciendum is that which issues in criminal cases, and is deemed 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 reason he is confined. It is also in regard to the subject deemed his writ of right, that is, such an one as he is intituled to a simple justice, and is in nature of a writ of error to examine the legality of the commitment; and therefore commands the day, the cause, and caufe of detention to be returned. 2 Inf. 55. 4 Inf. 123.

The habeas corpus ad faciendum & recipiendum issues only in civil cafes, and lies where a person is sued, and, according to superior jurisdiction, may be removed, he 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 Bac. Abr. 2. If upon this writ a civil action, and also a matter of crime be determined, as that if a person be arrested for debt, and also charged with a warrant of a justice of peace for felony. 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 caufe, tho' they are in the nature of matters of storm and stress, or that the court will consider 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 before; but upon the writ ad faciendum & recipiendum, there ought not finally a matter of crime to be returned, for that belongs to the habeas corpus ad faciendum. 2 Hal. Hiff. P. C. 145. and fee 6 Med. 123.

There is likewise a writ of habeas corpus ad referendum, wherein a person is confined in gaol for a cause of action accruing within some inferior court, and a third person hath also a cause of action against him, in which case he may have this 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. R. cannot be removed to the G. B. by this writ, nor vice versa, for in these cases there can be no defect of justice, as these courts have concourse as well of local as transitory actions. *Dyer 197. a. 249. pl. 84, 296, 307. 1 Med. 235. *Styl. Prat. Regist. 330. 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 bind 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 proritis manibus deliver the record into the King's Bench, together with the body, and thereupon the court of King's Bench may proceed to bail, discharge, or commit the prisoner. 2 Hal. Hynt. P. C. 147.

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 act.

2. In what cases, and to what places, it may be granted.

3. Of the manner of suing it out; to whom it shall be directed; by whom it shall be returned; 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 failing any 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 act.

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 Inf. 55. 4 Inf. 290. 2 And. 297. 2 Tom. 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 bind 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 proritis manibus deliver the record into the King's Bench, together with the body, and thereupon the court of King's Bench may proceed to bail, discharge, or commit the prisoner. 2 Hal. Hynt. P. C. 147.
and extend beyond his authority. And for any offense, the said person shall be brought before the court of Exchequer or Common Pleas, unless it were in the case of privilege, because those courts are confined to civil causes; and therefore unless the party were an officer, or intimated to the privilege of the court as an offender, or an officer, such courts had been a fair commence-ment in their suits, they could not grant a habeas corpus ad satisfiendum, tho' they might any other writ of habeas corpus.}

4. But this writ shall be granted upon any of the writs of habeas corpus or certiorari, and in all cases in which it is shown that the defendant was lawfully held, and that no habeas corpus ad satisfiendum or any other writ of habeas corpus could be granted by the common law, if such were in the case of privilege, because such suits are confined to civil causes; and therefore unless the party were an officer, or intimated to the privilege of the court as an offender, or an officer, such courts had been a fair commence-ment in their suits, they could not grant a habeas corpus ad satisfiendum, tho' they might any other writ of habeas corpus.

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And it is hereby further enacted, \textit{sect. 7.} 7. That if any person, who shall be committed for treason or felony, plainly and specially express'd in the warrant of commitment, upon his prayer or petition in open court the first week of the term, or the fifth day of the following term, or general safe-delivery, be brought to his trial, shall not be indicted some time in the next term, feizings of timer and terminer, or general safe-delivery, after such commitment, the justices of the said court shall, upon motion in open court, the last day of the term or feizings, for without 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, \\textit{sect. 8.} 8. That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process 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, \textit{sect. 10.} 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, set the time being, of the determination of any of the said habeas corpus for the vacation-time, upon view of the copy of a warrant of commitment or detainer, or on oath made that such copy was sealed, shall deny any writ of habeas corpus by this act required to be granted, being moved for as aforesaid, they shall severally notorize to the party granting the form of good.

It is provided, \textit{sect. 18.} 18. That after the affizes proclaimed 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 the affizes in open court, who thereupon shall do what is to justice shall appertain.

But it is provided, \textit{sect. 19.} 19. That after the affizes are ended, any person detained may have his habeas corpus, according to the direction of this act.

\textit{sect. 3.} 3. Assisted and subjaeted by two witnesses. One witness, by an affidavit that the other is sick, is sufficient.

\textit{comb. 6.}

\textit{sect. 7.} 7. The first week of the term. A person need not enter his prayer the first week, if there be an act of parliament, which concludes the habeas corpus act, and take away the power of bailing for a time.

\textit{salt. 103.} — The grand seizings of \textit{Halses} is in nature of a term; so that the party entitling his prayer thereon the want of profession for a term, \textit{B. R.} may bail him. 

\textit{comb. 6.}

\textit{sect. 10.} 10. In the vacation time. And therefore this statute makes the judges hable to an action at the suit of the party prayed in one case only, which is the refusing to award a habeas corpus, and 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.

\textit{hat. P. C. 42.}

\textit{section 11.} 11. 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 perons 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 committed by a warrant of a justice of peace, or secretary of state, and they committed by rule of court, for that is not within the meaning of the act, which speaks of a commitment by warrant. 

\textit{cofis in Law and Equity 429. See Boll.}

\textit{sect. 2.} 2. In what cases, and to what places, is any person granted.

A \textit{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. \textit{V. 1.} 276.

By the 31 Car. 2 sect. 1, \textit{sect. 6.} 6. It is enacted, That if any judge of this realm shall be committed to any prison, or in course of any office or service, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and delivered unto the custody of any other officer or officer, unless it be by \textit{habeas corpus}, or some other legal writ; or where that writ is delivered to the comtiable, or other inferior officer, to carry an \textit{habeas corpus} to the common gaol; or where any person is sent by order of any judge of office, or justice of the peace, to any common workhouse or house of correction; or where the prisoner is removed from one prison or place to another within the same county, in order to a trial or discharge by one course of law; or in case of full term, for infection, or other necessity; upon a pain, that he who makes the seizings, or any other person by him, shall be in any court of records, or other court of record, in any county of this realm, in the name of the King, shall recover damages in proportion to the injury done him. 

\textit{firm. Corpus com cas. 1, 21 H. 6. 44. a. 1 hyl. 15. 10 H. 7. 17. 5 Ch. 64. 11 Geo. 2. 52.}

But it was held in \textit{Bollands} cafe, who together with the other jurors appointed to try an indictment for a riot between the King and \textit{Pen and Mast}, were fined at the Old Bailey, because they found a verdict contrary to the former evidence of \textit{direct and circumstantial evidence} in matter of law; and for nonpayment of the fine, divers of them being committed to a prison, who brought \textit{habeas corpus} in C. B. and the imprisonment held illegal, in several conferences with all the judges; that yet no action lay against the commissioners, because they acting as judges and commissioners of oyer and terminer, can no more be punished for an erroneous commitment, than they can be for erroneous judgment; and the highest remedy the party in this case can have is a \textit{writ of habeas corpus. 41 Med. 113. 3 Ed. 322, 328. 2 Vaughan 153. 2 Jon. 13. 1 Sid. 773.}

If a husband confine his wife, she may have a \textit{habeas corpus}; but the judges on the return of it, cannot remove the wife from her husband. 

2. \textit{Lec. 128.}

A motion was made by \textit{Craggs} for the Lord \textit{Leigh}, for having in court the body of his wife; and the case was, The parties were married in 1669, and because they were both within age, no settlement was made till 1671; Lord \textit{Leigh} perjuries his wife to levy a fine of some lands of good per annum, whereas the had the inheritance, to him and his heirs; and because he prayed to advise his friends, he continued 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 \textit{Leigh} was ready to perform; but the Lord \textit{Leigh} took upon him an affirmation to be sealed, upon which the made the same report 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 ther by the barbarous usage of his husband he fell sick, yet he would not let her physician or servants to attend her, or to be visited by her friends; and per. cur. a \textit{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 ther it was objected, that here was no affidavit but of such common for the King had made it. The lady, or to her mother, yet the \textit{habeas} shall go to put the Lady in a condition 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 good.
If a person be in custody, and also indicted for some offence in the inferior court, there must, besides the break corpus to remove the body, be a certiorari to remove the record; for as the certiorari alone removes not the body, so the break corpus alone removes not the record itself, but only the prisoner with the cause of his commitment; and therefore, although upon the break corpus, and the return thereof, the court can judge of the sufficiency or insufficiency of the record, committed upon the bodies, or of discharging, or remand the prisoner, as the case appears upon the return, yet they cannot upon the bare return of the break corpus give any judgment, without the record itself being removed by certiorari; but the same fames in the same force it did, though the return should be adjudged insufficient, and the party cited discharged thereon of his imposition; and the court below may institute new process upon the indictment. 2 Hal. Htji. 210, 211. 1 Saik. 352. Comb. 2.

But it is otherwise in a break corpus in civil causes, which supplies the power of the inferior court; so that if they proceed after, their proceedings are causa non judicii. 1 Saik. 352.

If a person be excommunicated, and the signinavit does not express that the cause of excommunication is for any of the offences within the statute 5 Eliz. the remedy expressly upon that statute is a break corpus; and upon the return of it the parties shall be discharged; 1 Term. 24. Dominus Lex v. Salter. & sid. 1 Sid. 181. 1 Rob. 683.

If the Chief Justice of the King's Bench commit one to the jail for his warrant, he ought not to be brought to the bar by rule, but by break corpus. 1 Salk. 349. Per Holt Ch. J. G. Phear. The gaoler, in the absence of the officer, took the body of the lord, he being judge of horfe, dealing, and in gaol at St. Alban's, was brought by break corpus and certiorari to B. R. and the court demanded of him what he could say why execution should not be done upon the indictment; and because he could not give good cause to stay execution, he was committed to the jail, who was commanded to do execution, and the next day he was hanged. G. Car. Cor. 760.

It hath been already observed, that the writ of break corpus is a prerogative writ, and that therefore by the common law it lies to any part of the king's dominions; for the King ought to have an account why any of his subjects are imprisoned, and therefore no action will lie at common law, but to return the cause with break corpus, &c. 2 Rol. Abr. 69. Cro. Jec. 543.

Hence it was held, that this writ lay to Calicie at the time it was subject to the King of England. Palm. 54.

It hath been said, that this writ lies to the marches of Wales, as it does to all other courts which derive their authority from the King, as all the courts exercising jurisdiction within his dominions do, and that it being a prerogative writ, it does not come within the rule Breach Domino Regis non currunt, &c. for that must be understood of writs between party and party. 2 Cro. Jac. 69.

And it hath been adjudged, that this writ lies to the five parts and to Berwick, a though objected to have been part of Scotland. Palm. 54. 96. Cro. Jac. 543.

8. C. 2 Rol. Abr. 69. and till writ has to a county pa- tante. 6 Rob. 2. & Car. 2. p. 686.

Also by the break corpus, &c. 31 Car. 2. c. 26. — for. 11. It is said to declare, "That in such corpus, according to the intent and true meaning of the act, may be directed and run into any county palatine, the five parts, or other privileged places within the kingdom, to bring bodies from the jails of Holm, or any of the jails of Tewkes, and the jails of Jersey or Guernsey; any law, &c.

3. Of the manner of suing it out, to whom it be directed, by whom it be returned; manner of compelling a return, and remedy for a false return.

By the 1 & 2 Ph. & M. cap. 13. No writ of break corpus or certiorari shall be granted to remove any prisoner out of the county, or to remove any recognizance, except the same writ be signed with the proper hand of the Chief Justice, or in his absence, one of the judges of the court, out of which the same writ shall be awarded or made; upon pain that he writeth any such writs, not being signed, as aforesaid, to forfeit for every such writ 5 l. A break corpus was prazed to the gaoler of the county gaol at Berwick, to remove one for in B. R. to allign errors in perfon, upon his record of his convic- tion of a premonitory for recidency; but this was not granted till the writ of error was brought into court under seal, and the record certified. Mch. 26 Car. 2. P. 96's case.

Every break corpus adjudicandam nulli in term-time be prazed; and if a writ were granted; but the writ van- ish corpus ad faciendum & recipiendum is usually granted without motion, as it relates to a civil affair only. 2 Med. 506.

Surety debt was brought against husband and wife on an obligation sealed by them both, and both being taken upon the recognisance for his body; it was moved for new break corpus to bring them into court, to the intent that the husband only might be committed into custody, and the wife discharged; and it was held by the court, that this break corpus for removing the bodies might have been for them without motion, but where the party is committed for a crime, there it ought to be on motion. 1 Lew. 1. Slater and Slater.

Wherever a person is imprisoned by any person whatsoever, whether he be one concerned in the administration of justice, as a sheriff, gaoler, &c. or a private person, such as a doctor of physicks, who confines a person under pretence of curing him of madness, &c. the break corpus must be directed to him. Gath. 41.

A break corpus was directed to the Chancellor of Durham, by which he was directed to make a precept to the sheriff to have the body of J. S. with the cause of his commitment, Carum Domino Regis apud Wigan; the Chancellor returned, that he make a precept to the sheriff to have the body before him, with the cause of, who accordingly returned the cause and the body before him, and set out the cause, & habeas corpus directions; & per Hale Ch. J. a break corpus ad faciendum & recipiendum directed in this manner is good; for a break corpus ad faciendum, for the King may fix his writ to whom he pleases, and he must have an answer of his prisoner where-ever he be; there is a great deal of difference between a break corpus ad faciendum and other break corpus; for this is the subject's writ of right, in which case the county palatine has no privileges, in 32 Ed. 1. a break corpus ad faciendum was directed to the Chancellor, to commit him to the county gaol; but the person whose body was to be taken did not return the body to us, for here is no corpus pata-
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for it is not enough to say, that the filfiff returned the body to him, but he ought to return it to us here: we have nothing before us, therefore he must be removed, for he is brought up without a warrant. Hill. 25 & 26 Car. 2, in B. R. 3 Bac. Ab. 9. 3. Bac. Ab. 279. 8. A habeas corpus directed in the disjunctive to the sheriff or gaoler is wrong; but when a man is taken on a warrant of the sheriff, in pursuance of a writ to the sheriff, the habeas corpus ought to be directed to the sheriff, for the party is in his custody, and the writ itself must be returned, otherwise it is where one is committed to jail, immediately, as in cases criminal. 1 Stat. 350, per curiam.

This writ must be returned by the very same person to whom it is directed. A habeas corpus was awarded to the sheriff of ——who before the return leaves the office, and a new writ must return the truth of the whole matter, under seal of an almoner; but if he be committed to jail, 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 cause of the prisoner, and make it either better or worse than it is upon the warrant; and if he may take upon him to return what he will, he makes himself judge, whereas the court ought to judge, and that upon the warrant itself. 1 Stat. 349.

If a person in custody on an execution has a writ of habeas corpus brought by him, the writ of execution must accordingly itself must be returned, as well as the sheriff's warrant for taking him into custody, the order for the return, and the body of the prisoner, there must be a writ of habeas corpus, as against the sheriff, as the writ is right; and though the writ be wrong, yet if the writ is right, the party is rightfully in custody of the sheriff. 1 Stat. 350.

Upon a habeas corpus directed to the constable of Windsor Castle to remove from custody of one Mr. Taylor, a barrister, at the day of the return of the writ, a return brought in the prisoner into court, and the writ, and the warrant by which he was committed; but the court fled I do not know where, for it ought to be entered in Latin, and higrofied in due form. 1 Paych. 18 Car. 2. Taylor's case. 3 Bac. Ab. 157.

It is laid in general, that upon the return of the habeas corpus the cause of the imprisonment ought to appear as specifically and certainly to the judges, before which it is returned, as it did to the court or person authorised to commit. 1 Paych. 137.

For if the commitment be against law, as being made by one who has no authority to do the cause, or for a matter for which by law no man ought to be punished, the court are to discharge him, and therefore the certainty of the commitment ought to appear; and the commitment is liable to the same objection where the cause is to be held, for forth, that the court cannot adjudge whether it was a matter of ground and of imprisonment on behalf but for this title Commitment and Criminal in criminal cases, and 1 Hal. Hcals. P. C. 384. Stain. 676. 12 C. 130-1. 49.

Rivard an attorney of C. B. being committed to Newgate by my Lord Mayor and Sir John Robben for refusing to give security for his good behaviour, was brought by habeas corpus to the C. B. and it was returned as the cause of his commitment, that whereas he had been complained of to my Lord Mayor and Sir John Robben for several misdemeanors, particularly for housing his Majesty's subjects to the disobedience of his Majesty's laws, more particularly of an act of parliament made in the 22d year of his reign, against sedition; and whereas he had been examined before them for abetting such as abettad fetious concinitics, contrary to the statute 22 Car. 2, and upon his examination they found cause to fetiphe him, therefore they required fore- ties of him for his bad behaviour, and for refusal committed him. 34. Judging, was of opinion, that by abetting such as frequentcd sedition; concinitics, must be intended abetting them in that particular, and signifies as much as encouraging them to frequent such concinitics, and finding cause to sedition him, &c. (which cannot now be question'd, for the return is admitted) they may
may well send him to prison, and therefore I ought to be
reminded. But Longham Ch. Jull. Tyrell and Archer,
were of a contrary opinion. 1. Because it does not appear
as the frequenters of conscience in any way which the law allows, by ascertaining an a paell for
them, or the like. 2. To say that he was complained of,
or that he was examined, is no proof that he was guilty;
and then to say, that they had cause to felip him is,
too cautious; for what can he tell when they may count a
case of felony, and how can that ever be tried? at
this rate they would have arbitrary power, upon their
own allegiance, to commit whom they pleased; whereas
they cannot require forcics for any man’s behaviour, and
consequently not a writ for refusal, unless the juries
have any such act of their own knowledge, or
by proof of writs, that tend to a breach of the peace.
Upon this return, Archer declared his opinion to be, That
he should not be reminded, but give his own recognition
to appear in court the next term, to answer any thing
that shou’d be alleged against him; but Longham and
Tyrell were for his absolute discharge; for seeing by the
return it did not appear there was any case for his com-
mitment, they thought they had no reason to require a
recognition of him. Thereupon Hill moved, that he
could not be discharged, the cause being two for it. But
Archer replied, that it had been several times held, that
where there were three opinions, that was taken to be
proof of the matter contained, and accordingl’y Radnor was discharged. Longham and Tyrell
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 their petition, that might be willing to be
bound for him in 40L. 5. It must not be willing to be bound
for him in 100L. 6. 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 contented to give security, then the juries ought
to have told him the sum. Trin. 22 Car. 2. 1. B. R.
Brodys’s cafe. 3 Bus. Abr. 12.

5. Of staling any thing contrary to the return; of
amending any defect in the return; and of bailing, dis-
charging, or remanding the prisoner.

It seems to be agreed, that no one can in any case con-
trast the truth of the return to a habeas corpus, or plead
oroggst any matter repugnant to it; yet it hath been
held, that a man may confest and avoid such a return
by admitting the truth of the matters contained in it, and
fuggsting others not repugnant, which take of the effe-
cr Cl. Lit. 821. 3 C. R. 71. b. 2 Hen. P. C. 113.

Upon a habeas corpus it was returned, that Swallow, a
ccetizen of Lounds, was fined for slander, and was com-
mitted for his fine by the judgment of the court in
Lounds. Swallow alleged, that he was an officer of the mint,
and by an ancient charter of privilege granted to the
minter or moneyst, he ought to be exempted. It was at
first doubted whether he might not plead this to the
return, it being a matter consistent with it. Upon the
suite I. P. 2. it is held the parties may come in and plead,
and to upon 5 Ebra. But here there is a difference;
for he might have pleaded this in the court below, but
now that is past, and here is a judgment and execution.
Another day Swallow 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 benefit by it, for such cases. But the court
privilege ought to be allowed, for it is very ancient, and
it appears he has an office of necessary attendance elsewhere,
which makes the privilege reasonable; the king may by
his charter exempt from juries, if there be enough besides,
much more here; and if there be not sufficient besides,
upon what ground he pleads the privilege, it might be suppon-
ded; and Swallow may be discharged by this court now
and as well he could at first, or as if he had taken upon
him the aldermanship. This court is supreme and ma-
datory in such cases. And he was accordingly discharged,
and remanded in B. R. Swallow’s case. 1 Scot. 275;
2 Ed. 55. 56. 57.

Ato the court will sometimes examine by affidavit the
circumstances of a fact, on which a prisoner brought
before them by a habeas corpus hath been indicted, in
order to inform themselves, on an examination of the
whole facts, whether it appear that the prisoner himself,
or not: And accordingly here, where one Jackson, who
had been indicted for piracy before the justices of Admi-
rals: on a malicious prosecution, brought his habeas corpus
in the fast court, in order to be discharged or bailed, the
court examined the whole circumstances of the fact by
affidavits upon which they determined that the prisoner,
himself, if any one, was guilty, and carried on the pro-
cession to fix on himself: And thereupon the court,
in consideration of the unreasonable of the prosecution,
and the uncertainty of the time when another felions of
Admiralty might be held, admitted the said Jackson to
bail, and committed the prosecutor till he should find
bail to answer the facts contained in the affidavits.
5 Med. 323. 454. 2 Jan. 222. Trin. 4 Geo. 1.

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
officer, in the same manner as if the return were ori-
iginally what it is after the amendment. 1 Med. 103,
103.

But after the return 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 & per curiam was directed to Sir Robert,
mayor of London, to have the body of Briggs, daughter
and heir of Sir Thomas Hiji, deceased; and upon the
poucr he returned good temper receptionis bojes brevis
nec a quos passa sunt jus infra ecfuiva mentum; and the
conseil of the lord mayor examined the return that the
poucr was carried away for the bord matter for detec-
tion in custos! pur for bceft grefor: Gd pe per er
this is an insufficient return; for he ought to lay not
only temper receptionis bojes brevis, sed; debusis, upon
return of a poucr. Then a question was, if the return
could be amended; for though a rule was made out, the
return should be filed, yet this was not actually done;
but per cur., 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 the
officer is not detained in ferris; but though the hath
the liberty of the house, if he cannot go out of the house, or
be accompanied by the keeper, then the habeas cur-
tody; and the court shall adjudge what force of outis-
dy is intended by the writ. Hill's 26 & 27 Cur. 2. in B. R.
Emerson v. Sir Robert Turner. 2 Sco. 128. 3 C. R. 4434.

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. Spa. 16.

By the petition of right, or 17 Car. 1. cap. 10. the
court must within three days after the return of the ha-
bex corpus either discharge, bail or remand the prisoner.
But it seems that a commitment by the court of King’s
bench to the Marshalsea is a remaining, being an im-
prisonment within the statute. 5 Med. 22. 3 Bus. 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 matters, whether it hath reason to bale him or not.
Then he came, and order him to be brought up to time to
time, till they shall have determined whether it is proper
to bail, discharge, or remand him absolutely. 1 Vent.
330.

And also in doubtful cases the court is to ball or dis-
charge 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. 1 Salk. 348. 5 M'd. 19, 20.

If on the return of the habeeus corpus it appears that the whole or part of the rights granted by the writ of error, the court shall not determine that point, yet will it let the defendant at liberty, so as to let him choose where he will go into a court of error; and being there, he will order him into such hands as will take effectual care of him. 3 Salk. 526. 2 Lev. 128. Stra. 982.

6. Of the habeeus corpus ad faciendum & recipiendum.

The habeeus corpus ad faciendum & recipiendum is used only in civil causes, and lies for removing fuces 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 M'd. 235. 2 M'd. 158.

This writ fuges the powers of the court below; so that if they proceed after, the proceedings are void, and cannot be enforced. 1 Salk. 352.

By this writ, the proceedings in the inferior court are at an end, for the person of the defendant being removed to the superior court, they have lost their jurisdiction. Therefore, the proceedings in the inferior court, are de novo, and bald de novo must be put in in the superior court. Sinn. 244.

And allothis writ be of a right, yet where it is to be a rightful suit, the court may refuse it, as where an action of debt was brought against a female heir, and after appearance and plea, pleaded, and married, and then removed the cause by habeeus 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 habeeus corpus, they would have granted a procedendo; but that now the plea in abatement was given, and to her being an heir, the court doth not notice the proceedings below, or of what preceded the habeeus corpus. 1 Salk. 8. Hetherington v. Reynold.

After an interlocutory, and before final judgment in an inferior court, a habeeus corpus cum cauca 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 fea facias against the executor, 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 unanswerable. 1 Salk. 352.

If an action be brought in London for calling a woman a whore, this cannot be removed by the habeeus corpus, because the words are not actionable elsewhere; and if allowed to be removed, the custom would be destroyed. 2 Rol. Abr. 69, and fees Erath. 75. See 14 Vin. Abr. tit. Habeas Corpus.

Habendum, is a word of form in a deed or conveyance. Every conveyance must have two principal parts, viz. the premies and the habendum. The office of the premies is, to exprese 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 word grant, is implied in the premies, is by the habendum controlled and qualified. As in a lease to two persons, habendum to the one for life, the remainder to the other for life, this altereth the general implication of the joint-tenancy in the freehold, which should pass by the premies, if the habendum were not. 3 Co. vol. 2. fol. 53.

Buckleys case. Curiel. 390. 1682.

The office of the habendum is to limit the certainty and extent of the estate to the feoffor or grantee, for the habendum need not repeat the thing granted; it is sufficient if it be named in the premies, because it is the premies that makes the gift, and the word habendum does of its own nature imply a thing limited or designated. 2 Rol. Abr. 69. 2 Co. 55. n. 9 Co. 47.

Of the habendum there are these things observable: 1. That the habendum can't pass any thing that is not expressly mentioned or contained by implication in the pre-

millies of the deed; because the premies being part of the deed by which the thing is granted, and consequently that makes the gift; it follows that the habendum 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 grantor should hold a thing which was never given him. 2 Rol. Abr. 65.

Hence it is, that if a man grant a habendum together with another manor, or with the advowson of another manor, only the manor granted in the premies will pass. 2 Rol. Abr. 65.

But if a private person grants a manor, habendum una cum advocatione, which belongs to the manor, this is a good conveyance in the advocation, because it was impliedly given by the gift of the manor itself. 2 Rol. Abr. 65.

2. How far the habendum may alter or abridge the gift in the premies; and here it is regularly true, that the habendum, that is repugnant and contrary to the premies, is void, 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 subsequent part of the deed, to contradict or retract that gift which he made in the premies; as if a man gives lands to J. S. and his heirs, for life, this is a void habendum, because repugnant to the premies. 2 Co. 23 Bache'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 estate be given in the premies, but only a grant generally to J. S. for J., this creates an estate for life in J. S. by the habendum, and therefore gives J. S. an estate in the prenies for his own life; for which reason it is implied in the premies, that if the habendum had by the habendum limited the rent to J. S. for years, or at will, there would be nothing good; for the law creates an estate for life in J. S. only because there was no express estate given by the grantor; but when 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, 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 positively limited in the deed. Hoo. Lit. 170. 2 Co. 24 a. 55. 2 Rol. Abr. 65, 66. Str. Eli. 254. 15 Co. 15.

2. If to the perfection of an estate limited in the premies there be a ceremony necessary, which is not requisite to pass the estate in the habendum, then if the ceremony be not performed, to carry the estate in the premies, the habendum shall fail; tho' it be repugnant to the premies; as if a man covenant, grants, demises, and to farm lesse land to J. and B. and the heirs of B. habendum to J. and B. for three hundred years, this is a term of years in J. and B. tho' there be words of inheritance, for it was plainly the intention of the cessor to create a tail in the feoffee for life, and after the life of the feoffor, J. and B., and their heirs demise; besides, it is evident that the legacies by the premies could have but an estate at will, because the words of inheritance in the premies were not sufficient to:

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But if the grant in the premises be of a rent to a man and his heirs, habendum, for the life of the grantor, this is a void habendum, because it totally defeats the operation of the word heirs in the premises, and consequently is repugnant, and not explicable, and therefore void. 2 Co. 25, 26.

If a man make a bequest in fee in 20 acres to A. 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 estate and possession, yet the habendum explaining the manner of placing is not inconsistent or repugnant, because it makes no division of that undivided possession which was given in the premises. Co. Lit. 192. b. 183. a. 

But if the habendum had limited 10 acres to A. and the other 10 acres to B., this would have voided, because the habendum, in this case, contradicts, and is repugnant to the premises; for by the premises, the entire and undivided possession 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. 

Habendum to lie for two, habendum to one for life, remainder to the other, this is a good habendum, because it explains the right of the gift in the premises, and shows that they hold the whole in fee demised, one after another. Co. Lit. 193. 194. 24 Keb. 105.

The gift of land to two, habendum to one for life, remainder to the other, this is a good habendum, because it explains the right of the gift in the premises, and shews that they hold the whole in fee demised, one after another. Co. Lit. 193. 194. 24 Keb. 105.

But a demise to A. habendum to B. and C. pro terminis vitæ of alterius personæ vitæ is void, because a void habendum, because it explains the title of the gift in the premises, and shows that they hold the whole in fee demised, one after another. Co. Lit. 193. 194. 24 Keb. 105.

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BATTLE, is the plant of the French lilies, signifying a part or haven of the sea, where they flow into other countries, and where they do arrive when they return from their voyage; 

This word is used 27 Port. 6, c. 3: 

Cowell, edit. 1727. See Daffy.

Daffy, abundance, plenty. — Reciprocis de cofae & turis, et se mune propter habundam cofa maximam. 

Bachell, A hatch, a gate or door. 

Cowell, edit. 1727.

Bachell, A hatch or cutting instrument of iron. 

Cowell, edit. 1727.

Bachell, A hatch or cutting instrument of iron. 

Cowell, edit. 1727.
HAL

prolet iherum ad plazium abattores, &c. Haven or Port
Church, 4 Ed. 4, fol. 147.

Haga, (Sax. haga, mansis;) A house in a city or bo-
rough. In Domflevy, tin. Sylfex, Terra Regis, num. 11.
Radulfus tenet uam hagem de vic. dux. Willeriam quinquo
hage de quinque sol. &c. An ancient anonymous author
expounds haga to be domus or house. Cum (pro on a past)
persona longa hagem apellatis fil-
242. Cate in Litt. fol. 56. b. See Palu. It also
signifies an hedge. In an old book, aometne belonging
to the abbey of St. Austin in Cambrai, we find that
King Stephen fent this writ to the chief and justices of
Kent, that they should not take any parcel of the
Saxons, Rex Agilmarum, &c. &c. &c. &c. &c. &c. juridicitii de Kent, faltem. Principis quod se sciatis ha-
tere ecclesiam etiendum Augustini & monastri hagem faunam,
quam Gesta est divit, &c. Cowell, edit. 1777.

Haga. A hedge. Sax. haga, mergd into haga, with-
—Quid tandem dilius placent— inclusivis fissa-
p. 2. 247.

Hagquit. See Pague and Pagueut.
Paga, and Paffpa. A hedge, and sometimes taken for
a park or enclosure, valetatum fuit, &c. fissata haga & fa-
latum. Brit. lib. 2. c. 40. num. 3. Hence hoijenement for
a hedge-fence. Rit. reg. 33 Ed. 3, in Sac. de Poitou.

Hagan. This word is the irregular compound of the French
f. sapra, and the Sax. kete, companis, and used for
a permission to take thorns or filth to make or repair
hedges; or rather a mullet for breaking hedges. See
Peygugue.

Hgufia. Hagiat, Reque of 2 Ed. 6, against shooting
with hali dorn, 6 & 7 Will. 3. c. 13.

Haggenlen. See Vamora.

Hagbennum. See Herbenamum.
Payer-powder. See Powder and thot.

Hake. A sort of fish dried and salted, called commonly
Pove John, in the Western parts of England, hawket, from
Sax. hagrot. The proof of this is, the Sax. &e. & e. &g. &e.
Et in tribus capita unlabthe piseus cum una viridly
hag, cum separa consig, & cum una espa de hale.
Antiquit. Parochial. p. 575. See Spealmans Gafiyry
in Haketen.

Haleton, A military coat: balatus fuit Esopotes
quadrum armaturn, quam aditum vulgariter appellatur.
Walt. in Ed. 3.

Halfe-blood. See Administration. Defect.

Halfe-bauche. See Pague.

Hallemark. (Dimidia merk,) Is a noble. F. N. B.
fol. 5, where he faith, That in cese a writ of right be
brought, and the fein of a demonstration alleged, the
plaintiff is kept travelable by the defendant; but
he may tender or proffer the half mark for the inquiry
of this fein; which is in plain terms, that the defendant
shall not be admitted to deny, that the defendant or
his ancestor, was feigned of the land in question, and to
prove his denial; and that he shall be admitted to render half a
mark in money, to have an inquiry made, whether the
defendant, &c. were so feigned or not. And in this
figurative we find the same words in the Old English Nat.
Brev. fol. 26. Know, that in a writ of right or an ad-
vowment brought by the King, the defendant shall not
proffer the half-mark, &c. whereof Richard, abep. p. 1560,
giveth this reason, because in the King's cause, the de-
defendant shall be permitted to traverse the fein, by licence
obtained of the King's serjeants; to which effect see
F. N. B. fol. 31.

Halffpay officers, What persons are intitled to re-
ceive half-pay, 4 Ge. 1. c. 3. sect. 18. Rules for ap-
plying half-pay, 32 Ge. 2. c. 18. fent. 19. 25. See
Halle.

Halftoll, Is used in the Chancrey for the selling
of commissions to delegates, appointed upon any appeal,
either in ecclesiastical or marine causes. 8 Ed. 5.

Halftongue. See Medicus Linguari.

Halifiat, Provisions for buying and selling of wool
the last of 23 P.; fol. 12. 3.

Haligian. See Halmace.

Halme. See Palmace, and Palmature.

HAL

Halte, An hole; from the Sax. hale, anghus. Cowell,
ed. 1727.

Haltonwelf, i.e. Hollynowdife, or people who held
lands for the service of repairing or defending a church or
paleloure, for which pious labours they were excused from
secular and military services. Hugo episcopus Danemelii
hominum de episcopato pro administra
se in guerram Sottie, &c cum rediit sent ent ab eo as non licentiam, scit en apud Darn
elnum inuncar. Quad if e graviora fuerant, secreent se partem contra episcopos, dicente se efti haliwoloff, &c
et suas tas tenere ad defensionem caupris S. Catharieti, ut deere se extere episcopat, 'federet ultra Timan &

Hall, (Halia, Saxon bexol) Ar cindered denoted a chief
mansion-house or habitation; which word we retain in
many counties of England to this day, especially in the
county of Palatinate of Chietor, where every gentleman
of quality's seat is termed a Hall. In the book of
Chast. Terra Hugonis de Munsterto. In Neotour hailu
dict, Hugo tenet wax terram quam Adan Reset init cl. R. E. (Rege Edvards) sine halla, i.e. sine domo. Cowell,
ed. 1777.

Hallage, Is a fee due for elects brought for sale to
Blackwell-Hall in London, Ge. vol. 6, f. 57. b. Also the
permitted to be sold at a fair or market, for such communi-
daries as are vended in the common hall of the place.

Hallamste, The day of All-hallows, or All-saints,
Nov. 1. of the crofts quarters of the year was com-
monly so computed in ancient writings from Halmas to
Hollimste.

Hallinort, Is a part of Yorkshire, in which the
town of Steffield stands, 21 fac. cap. 23. Cowell, edit.
1777.

Halmerd, The Dans when they invaded this nation,
had havocks with two edges; the Saxons had a like weapon
so called from the Germ. halt, palutum, and bord, bi-
poicz, which being adorned with gold and jewels, was
worn by noblemen, and from them the English had that
weapon, which is still used in Princes courts. Cowell,
ed. 1727.

Hallmec, See Badmec.

Halmec, or Halme, (from the Sax. heale, i.e.
ana, and gems, i.e. cowemus) Is that we now call a
court-baron; and the esmycele is the meeting of the ten-
ants of one hall or manor. Omen casia terminatur vel
hondredwo vel comitat vel balmece fsecum baktemium, vel
Dominianum civis. L.L. Hen. 1. cap. 10. The name
is still retained at Lugton, and other places in Hertfordshire.
It is taken sometimes for a convention of citizens in
that place, which is also called half ornament, or balmece.
As in London every company hath a hall, wherein they keep their courts, 4 lysi. f. 249. This halfmece and hallmecere are often confounded, though origi-
nally they were two distinct courts. But the word hal-
mece rather signifies the lord's court, or a court-baron
held in the manor, in which the differences between the
tenants were determined from: the Sax. hall, aulum, and
gems, conventus. Leg. H. cap. 1. quo. In W. Thor,
anos 1770. Ipsis Transtramini afferimatis se ad
capitetum carum beat. Augustini Conturor, pleseçindus caufa,
vel judicium jujidim, velo modo detere accedere, fed in halmece iu-uo in Thoma omnia sua Iudicia tacciweri.
Cowell, ed. 1727.

Hallsbergia. A coat of mail: from the Sax. hal, i.e.
ellum, and vlongin, currens. It was properly a defence
for the neck. Cowell, ed. 1777.

Halstang, See Clairefand and Pillawen.

Hallhead in Clee, Maiteners of its spinners how
pute into it. Pillonwefol.

Hallwefol, Properly an holy or ecclesiastical court;
howbeit there is a court held in London by this name,
before the Lord Mayor and sheriffs, for regulating the
bakers, and was anciently held on Sunday next before
St. Thomas's day, and therefore called the Holywefol, or
hole court: for it is there run thus: Caw to mace
was in coalelable caylde London, cearw majors &
veeces, &c. Cowell, edit. 1727.
Hand in and hand out, is the name of an unlawful game, prohibited by 17 Ed. 4. c. 2.

Hand in it. Four justices by the standard. Stat. 33 H. 8. 5. &c.

Hand-gritch. Peace or protection given by the King with his own hand. See among the compass of Alured and Gudrun, sect. 1. Et hoc est primum dictum eccles, pariter parietae juris, ut Regis hand-gritch jener insano

Hampshire. A county, a manorial pledge, that is, an inferior undertaking; for head baron is a superior or chief instrument. Sylm.

Hand in and hand out. Is the name of an unlawful game, prohibited by 17 Ed. 4. c. 2.

Handfast. Is four inches by the standard. Stat. 33 H. 8. 5. &c.

Handfast, (Ambrosius Dei gracia Dunelmensis) etiam quattuor deinum in hac capite, anno regni non, &c. It signifies also a franchise or privilege so called, granted to the lords of manors, whereby they hold peace, and take cognizance of the breach of that immunity. Cowell, ed. 1727.

Handfast. A surety, a manorial pledge, that is, an inferior undertaking; for head baron is a superior or chief instrument. Sylm.

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HAW

HAW

Vatches or Vatches, (mentioned in the Stat. 27 H. 8. 23. by the name of hatches and tis) are certain dams or mounds made of rubbish, clay or earth, to prevent the water from the stream-work and tin-walkers from running into the fresh rivers. And the tenants of Babbletree, and other farmers there, are bound to do yearly certain days works ad la hatches.

Survey of Cornwall.

Vatches and Capps. Shall be fulled by hand, and not in a mill, 2 Ed. 4. c. 5.

Hatters, &c. are to be looked upon as merchandizes, that ought to be ushered in open market. The appellation feemeth to arise 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. 6, and 33 Hen. 8. c. 4. We now call those hatters that go up and down the streets crying news books, and selling by retail; and those that sell by wholesale from the press are called Mercies.

Cowell, ed. 1727.

Hawkers of unblanpt news-papers to be sent to the house of correction, 16 Geo. 2. c. 16. sect. 8.


There shall be paid to his Majesty by every hawker, pedlar, petty chapman or other trading person, going from town to town, or to other markets houses, and travelling either on foot, or with horses or other vehicles, 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 driving burden shall pay 41. a year for each horse or other beast, and above the other 4 l.

Sect. 2. Every pedlar, &c. so 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 licensing hawkers, pedlars and petty chapmen, 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 21. in the poorer for prompt payment.

Sect. 3. If any such hawker, &c. be found travelling without licence, such person shall forfeit 21. one moiety to the informer, and the other moiety to the poor of the parish; and if any person so travelling, upon demand made by any justice of peace, mayor, constable or other officers of the peace, or any town corporation or borough where he shall so travel, shall refuse to produce his licence, he shall forfeit 51. 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.

Sect. 4. The commissioners, or any two of them, are required upon the terms aforesaid to grant a licence to every hawker, &c. for which licence they shall be paid only 11. unless such hawker, &c. shall travel with horse or other beast, and in that case there shall be paid 21. 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 Wednesdays 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.

Sect. 5. If any person shall forge any licence, or travel with such forged licence, such person shall forfeit 51. 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 subject to such other penalties as for forgery.

Sect. 6. Any person fined 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.

Sect. 7. If any constable or other officer shall neglect to be allying in the execution of this act, being required, and being thereof convicted by the oath of one witness before any justice of peace, he shall forfeit 41. to be levied by the licence for the sale of goods, by warrant of such justice; the one moiety to the poor of the parish, and the other moiety to the informer.
HAV.

HAY.

The game with Flute.

Haymarket. A compound of two French words, viz. haye, i.e. fette, and gard, i.e. caufin, and signifies one that keeps the common herd of the town; and the reafon may be, because one part of his office is to look that they neither break nor crop the hedges of enclosed grounds: He is an officer sworn in the lord's court, and of the form of oath you may fee in Heaton, f. 46.

Haymakers, Are fuch as play at hazard, a game at dice called; hazard or common hazard ad falia tolas, adjudicatur quod per fex dies in diuiso hic petitar foopar fuper coliujarium. Inter Plac. Trin. 2 Hen. 4. Suffer, 10.

Headborough, Head-borrow, Head-borough, is derived from the Saxon bend, i.e. toft, or caput, toft, caput. He ferves him that is in feet for the frank-pledge, and him that had the principal government of them within his own pledge. And as he was called headborough, fo was he alfo called buco-bad, buco-bad, third-borough, third-borough, chief pledge, or buco-badder, ac- cording to the diversity of each in several places. Of this the Lambard in his Explanation of Saxon words, in his Century, and in his Treatise of Confables, and Smith de Regis, lib. 2. cap. 22. the officer is now called a confable. The headborough was the chief of the ten pledges, the other nine were called hamborough or pligis manuhas, i.e. inferior pledges. See fifthburgh.

Headland is the upper part of ground left for the turning of the plough, whence the beam-saw. Tho. Anq. 587.

Head-pence, was an excifion of 40 l. or more, herefore collected by the fheriff of Northumberland of the inhabitants of that county twice in seven years, that is, every third and every fourth year, without any account made to the King, which was therefore by the statute of 23 Hen. 6. cap. 7. abolish'd for ever. See common fume.

Head-filker. See Head-pence.

Head-filk or Head-filk, (Colisjtrium) is compound of two Saxon words bela, i.e. bela, and fingo, fingo; or fingo, i.e. bela and fingo. See fifthburgh. But head-filk cannot signify a pillory in the charter of Commons of Forrest, cap. 14. Et pro culpa fententiae regis decem filios quis non? .i. atque. halfeimg. Sometimes 'tis taken for a pecuniary punishment or mulct, to commute for banding in the pillory, and is to be paid either to the King or to the chief lord, the fettolm man and the commissary chief, ruled Regis nor terror. Beuf. Doniz halfeimg. Leg. H. 1. cap. 11. Covell, ed. 1737. Headsmen. See halfeimg.

Hearth-money. See Quarter-money.

Heart. See Game.

Head-merchant, A fisherman below London bridge, who fishes for eels, smelts, &c. commonly at ebbing tides, and therefore is so call'd. Mentioned in Art. for the Thames Jery, printed 1328. See in his Survey of London, p. 152. fays, they are a fort of poachers, or unlawful catchers of fish in the river of Thames.

Hedberth, The privilege of having the goods of a thief, and the trial of him, within fuch a liberty. See in Art. of the Mandate, the Confessor to the abbev of St. Edmund—Hedberth, hidas reddiculam videlicet. Handfroke, &c. &c.

Hedbing-wears, ( Mentioned in 23 Hen. 8. cap. 5.) Are weares or engines made or laid at ebbing water for taking fish. Covell, ed. 1727.

Hedermannus.
Hebdomasibus. The weeks-man, or canon or prebendary in a cathedral church, who had the peculiar care of the quire, and the offices of it for his own week.

Cowell, the Cowell, for For'. I don't know if it is Cowell or Coivell, but I put both. This is a well-known word for a week.

Hebdomasibus, (Gr.) A week. This is a word for a week, and it is used in the Greek language.

Weel, is the name of an engine to take off in the river Ouse near York, anno 23 Hen. 8. cap. 18. and Heagcium, which occurs in our records, may be the rent paid to the lord of the fee, for liberty to use these engines.

Cowell, ed. 1777.

Hebdomasibus, (Gr.) A week. This is a word for a week, and it is used in the Greek language.

Vot., the Vot., of the Vot. This is a word for a week, and it is used in the Greek language.

The Vol., 8. printed by the kerker. This is a word for a week, and it is used in the Greek language.

Thus, accordant port, a wharf or landing-place; as in this charter of Addida, wife of King Henry.

Siunt praefectus & futuri quod ego Addida, Dei gratia Anglom Regina, dedi ecclesiae de Radinga, unumque anno in Natali Domino centum solis de hisa mea ad faciendum annuariarium Domini mei Rhetoricus, & uni & fummo principis in domino centum solis quatuor viginti, & barini & bartini paterini de praedita heda mea London.

Tyll. & C., Cartular, de Radinga, MS. fol. 5. a. Cowell, ed. 1777.

Pedagium, Toll or custom paid at the bithe or wharf, for landing goods, &c., from which custom duties example are granted by the King to the persons and societies: — Sicpe abas & mensis de Radinga et homines comum & eis insuper quiet de heagcium & thelomis & omnibus exaltationibus & conjunctutibus per totam Angiam.

Cattulae, Abbatiæ de Radinga. MS. f. 7-a.

Hedge-locking. See Wood.

Vofita, The Mahometan mer, or computation of time, beginning from the flight of Mahomet from Mecca, which was July 16, an. Chrft. 622.

Benfaire. See Pintarfce.

Gretir, (Heeres) Though the word be borrowed of the Latin, yet it hath not altogether the same significacion with us that it hath with the Civilians; for whereas they call Hreem, qui ex testamento fecundat in universum just tatfattari; the Common law calls him heir, that succeds by right of blood in any man's lands or tenements in fee; whereas the Common law nothing paffeth jure hereditatis, but only fee; moveable, or chattel immovable, are given by testament to whom the testator leftth, or else are at the disposal of the ordinary, to be distributed as he in confidence thinketh meet. Cauffeett in Confejted. Burg. pag. 909, hath a diffchnction of heres, which, in some forts, accordeth well with our law; for he, faith, there is heres fanguisinis & hereditatis. And a man may be heres fanguisinis with us, that is, heir apparent to his hereditary, or his ancestor; and yet may, upon displication, be defeated of his inheritance, or at least the greatest part of it. Every heir having lands by defeat, is bound by the binding act of his ancestors, if he be not: For the inani commendum, fictive debts & cont. Co. on Litt. fol. 7, 8. Cowell, ed. 1777.

An heir, faith Lord Coke, in the legal underfanding of the Common law, is he to whom lands, tenements or hereditaments, by the act of God and right of blood do defend, of some estate of inheritance. Co. Litt. 7, 6. 2 Co. 12, b.

The word heir in the notion of it implies, that the party has all those legal qualifications which our law requires in all persons that represent or stand in the place of another, and is of such importarce, that regularly without the word heir no fee-simple can be created. Co. Litt. 9.

1. Of the feudal kinds of heirs, namely, the heir apparent, the heir general, the special heir, the customary heir, and the heirs falic.

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 actions may an heir commence and prosecute in right of his ancestor, and what cases shall be bounded to answer his ancestor's debts and contracts.

4. What shall be effects in the hands of the heir.

5. Of the feudal kinds of heirs, namely, the heir apparent, the heir general, the special heir, the customary heir, and the heirs falic.

6. The heirs apparent. Here we must obserue, that no person can be heir unto the death of his ancestor, according to the rule, Nemo est heres viventis; yet in common par- tance he, who stands nearest in degree of kindred to the ancestor, is called, even in his lifetime, heir apparent.

Co. Lit. 8, a.

Also the law takes notice of an heir apparent so far as to allow his ancestor to bring an action of trespass for taking away his son and his quit rents, quarantine, &c., and if the defendant shall be found to answer his ancestor's debts and contracts.

Co. Lit. 37. 334. 335. 2 Lea. 232.

Burchet v. Durand.

But the son and heir hath no power over the inheritance during the life of the ancestor: Therefore if a son and heir's 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. Kelso. 84. Co. Lit. 265.

But if the son makes a covenant of the inheritance of his father, this passes an estate during the son's life; for it is a subject 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. Lit. 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. H. 7, and if the heir apparent be feised 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 at, 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 most necessarily mention the conuator, and convey themselves by him, before they can make out their title to the estate. 2 Ift. 523- 3 Co. 89, a. Hob. 333.

Heir general. The heir general or heir at 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 Descritt and Coparentes.

None but the heir gene., according to the course of the Common law, can be heir to a warrant or file an appeal of the death of his ancestor.

Co. Lit. 80, a. Gae. Fasc. 126, a.

If a condition be annexed to Borough English or Gavel-kind lands, and the condition is broken, the heir at law of the land; 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 the ancestor's alienations and disposition, as also by his covenants and conditions, as far as he hath assented; but if a man covenants, that after his death his heir at law shall stand seized to the use of his youngest son, this is void. Hob. 313. for Heirs.

The heir at law is bound 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. In the return of the flave purchase-money, he may but have the survivor of the flaves, 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 safest and lawfulest mode of obtaining one 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 inverts his father had no title thereto, or was only tenant for life thereof, the decree that is to be executed against him is never to be carried into execution against him; he is at liberty to controvert the jusfrice and validity of that decree; he may make a new defence from what his ancestor did, and vary his case as he shall be advised, and the parties go into a new examination of the matter, and hear the cause de novo, and the court judge whether the decree is good, 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 the heir at law claims the estate by virtue of his ancestor, and the party is not 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 had been of an ancient standing.

Secondly. The plaintiff in tail enters into former deas, and as the statute De donis prefers the estate to his heir, his ancestor cannot grant or alien, nor make any rightful estate of freehold to another, but for the term of his own life. Lit. foll. 613.

If the issue in tail be attained of scion in the life of his father, and is partitioned, upon the death of the donor, the donor cannot enter, for though the disability to take by defect 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 partition claim as heir to the donor, yet he may claim as a special occupant, for the gift is still a good uti juris perann, who shall take upon the death of the donor; 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 the estate. 1 Co. 166. a. 2 Co. 325. c. 3 2 Co. 335. c.

If A. binds himself in a recognizance or flavute, and after his death some of his lands descend to the heir of the part of the father, and some to the heir of the part of the mother, both heirs shall be equally charged; and if the conveyance loads one only, he shall have contributions. 3 2 Co. 335. c.

The heir at law is bound by his ancestor's alienations and disposition, as also by his covenants and conditions, as far as he hath assented; but if a man covenants, that after his death his heir at law shall stand seized to the use of his youngest son, this is void. Hob. 313. for Heirs.

So if A. binds himself in a recognizance or flavute, and after his death some of his lands descend to the heir of the part of the father, and some to the heir of the part of the mother, both heirs shall be equally charged; and if the conveyance loads one only, he shall have contributions. 3 2 Co. 335. c.

2. 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 descend to the heir, and be alone taken as the estate of the ancestor.

And this is not only where there are express words, but also where there are none; for the law by implication refers the condition to the heir of the fequest, or, for being prejudiced by the disposition, it is reasonable that he should take the same advantage that his ancestor were entitled to as to his estate. 3 Ed. 3. 349. 476. 4 Ed. 3. 407. 476.

If a man feised of lands in right of his wife, makes a feoffment in fee upon condition, and dies, and after the condition is broke, the husband shall enter for though no right descended to him, the title of entry be force of the condition which was created upon the feoffment, and referred to the feoffor and his heirs, descended. 8 Cl. Litt. 253. 6 Cl. Litt. 253.

The heir shall take advantage of a namus parce, for being incident to the rent, it shall descend 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 was created upon the feoffment, and referred to the feoffor and his heirs.

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The heir shall take advantage of a namus parce, for being incident to the rent, it shall descend 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 was created upon the feoffment, and referred to the feoffor and his heirs. 8 Cl. Litt. 253.

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If A. inter alia B., upon condition, that if the heirs of A. pay to B. the sum of 20 l., then he and his heirs may re-enter; this is a good condition, of which the heirs of A. may take advantage, and yet A. himself never can. Co. Lit. 214, 24. A. having issue three sons, William his eldest, Nathaniel his second, and Daniel his third; William died in the lifetime of his father, leaving issue only a daughter; afterwards the father devises the estate in question to A. 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 his wife pay to Daniel, his executors or administrators, the sum of 500 l. then the said lands shall come to his own 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 in equity praying, that upon the payment of the 500 l. he might have a conveyance of the estate; and the principal point of the case 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 said lands. For this was agreed that he was not to take the estate to the heirs in equity by the death of his wife, and that he could not; that this was a condition precedent and merely personal in Nathaniel, who had neither iss in re, nor ad rem, and could neither have devised or released, or extinguished this condition, and being a bare possibility, and he dying before it was performed, his heir could not, on this account, take the estate to the heirs in equity; and that it was not a conditional 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 were cited 10 Co. Lamb. 72. Frow. Bret. and Rigden. On the other side it was insisted, that this was like the condition in Co. Lit. 205, 210. b, where a feuement is made on condition that the feoffor shall before such a day, or there, if the feoffor die before the day, his heir may perform the condition, for the reasons there mentioned; and that it being to at law, it shall still be confirmed more liberally in equity, where the letter of a condition is not always required to be strictly performed; and for this were cited, 1 Chanc. Ca. 89, 2 Chanc. Ca. Bottie and Falkland. That the possibility of performing this condition was an interest or right, or strictura juris, which vested in Nathaniel himself, that he preserved the feoffor; and therefore this differed from Bret and Rigden, in Co. Lit. 210. a, where a feuement is made on condition that the heir shall be descendent of the heir of the donor; for this were also cited, 2 East. Partry and Rogers, 3d. Ca. 538. 3d. East. 691. 4th. East. 71. Anth. Manning's case. The case of the feuement being 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 fall; afterwards it was decreed by my Lord Chancellor, with the assistance of the Master of the Rolls, for the plaintiff, on Lit. 3d. 334, 335. And my Lord Chancellor said, that though a condition in feuements to law was not done within the time of the feoffor, the devise may take benefit by it by equity, ER. and that Nathaniel might have released or extinguished the condition. 3 Barr. Ab. 21, 22, Athl. 5th, 1. between Marks and Marks, in Chanc. As the heir at law is the proper and only person, who can take advantage of conditions, ER. annexed to the real estate; so shall he be bound by all such conditions, ER. which run with the land, whether such conditions were annexed to the estate by the original seffor, grantor or immediate ancestor. 1 Rol. Abr. 432. If a gift be made in tail on condition, that the donee should not sell the gift, and the donee hath issue two daughters, and one of them disconsents, the donee may enter and evict them both, because it was the original condition annexed to the whole estate, that no part of it should be discontinued. Co. Lit. 165. But here we must take notice, that neither tenant in tail, nor his issue can be restrained from aliening by fine or recovery, though they may be restrained from aliening by sequestration, or other tortious act, which amounts to a discontinuance. See Collatt. So where one devised lands to A. and the heirs male of his body, provided, that if he does attempt to alien, that then in lieu of the estate shall fail, and B. shall enter, and A. makes a satisfaction in B., and B. shall enter, and it was adjudged against B. and that the condition was void, because non sequitur what shall be adjudged an attempt, and how it should be tried. 1 Vent. 321. 3 Rich. 2d. Piercy and Dunclay. 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 confirmed a limitation; for if it were a condition, nobody could take advantage of it but the heir himself. Dyer 316. to Co. 41. 1 Vent. 159. As if a devise was in Borough Englysh to surrender to the use of his wife, and after devess to his wife for life, remainder to his eldest son, paying 40 l. to each of his brothers and sisters within two years after the death of his wife, ER. 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. Emb. 204. Willd. and Hammond. 3 Co. 20, 1. 2 Lem. 114. S. C. So where one devised lands in fee, having issue two sons and a daughter, devised to his youngest son and daughter 20 l. apiece, to be paid by his eldest son, and devest his lands to his eldest son and his heirs, upon condition, that his eldest son should not part with the same, and 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 were cited 10 Co. Lamb. 72. Frow. Bret. and Rigden. On the other side it was insisted, that this was like the condition in Co. Lit. 205, 210. a, where a feuement is made on condition that the feoffor shall before such a day, or there, if the feoffor die before the day, his heir may perform the condition, for the reasons there mentioned; and that it being to at law, it shall still be confirmed more liberally in equity, where the letter of a condition is not always required to be strictly performed; and for this were cited, 1 Chanc. 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tion upon B. without entry. 2 Mod. 7. Smithworth and Co., 20.

But whenever the ancestor makes a conveyance or disposition on condition, which goes in restraint and abridgment of the estate of the heir, he must have notice of it; for having a good title by descent, he is not obliged to take notice of such condition at his peril, as others must do. 8 Co. 4. Fryer, 572.

As when A. feited of lands in fee, and having issue only one daughter named B. by leaf 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 upon himself the trust 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 is, nor took upon his name the name of Fitzgerald, and the only point upon which judgment was given was the want of notice in B. of the settlement, without being heir at law, and so having a title by descent, the was not bound as effe to take notice of the condition. 3 Mod. 28, 1 Lut. Scog. Mollen and Fitzgerald.

3. What actions may an heir commence and prosecute in right of his ancestor; and where an heir shall be bound to defend his ancestor's debts and contracts.

It is clear that the heir may bring any real action deural, in right of his ancestor, but cannot regularly bring any personal action, because he has nothing to do with the allies or personal contracts of his ancestor. Co. Lit. 1644.

Also if an erroneous judgment be given against the ancestor, by which he lost the lands, the heir may bring a writ of error. 1 Roll. Abr. 747. Dyer 90. Gadd. 337.

And if one land be on the part of his mother, and lost by erroneous judgment, and dies, the heir of the part of the mother shall have the writ of error. 1 Leon. 261. 2 Sid. 56.

So the younger son, 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 Leon. 261. 4 Leon. 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 Leon. 261. 1 Roll. Abr. 747.

If a man sells 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 dies without issue, and J. S. brings a writ of error as coifin and collateral heir to the daughter, yet he shall never reverse the fine, for there could no right descend to him from the daughter, because she had but an effe
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 apparatatis & non extenfatis etdem eff parte, especially in a court of judicature, where the judges can take notice of nothing that does not come judicially before them, and appear in the pleading. Dyer 92. Cro. Eliz. 409. 1 Leon. 36.

If J. S. binds himself and his heirs in a bond, and thereupon judgment is obtained against J. S. and J. S. makes his will, and his heir at law executor, and dies, leaving lands which descended to his heir, yet he shall not be within writ of error, for he is not privy to the judgment; and if an extent is made upon him, it is a tenant, but after the lands are taken in execution, he may have a writ of error. Syl. 38, 39. White and Thomson's, for Roll.

Also the heir at law may, in right of his ancestor, maintain an action on 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 as 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. 152 a. But new by the 32 H. 8. cap. 37, an executor may maintain an action of debt for such rents accruing after the death of the Dece.

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 emblems of honour as belongs to his degree, set up in the church, or if a grave-stone or tomb be laid or made, &c. for a monument of him; in the event of the church being in the possession, and that those be annexed to the church, he cannot 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. 1. For this see 1 Roll. Abr. 675. Noy 114. Godst. 200. Co. Jat. 367. 2 Huf. 151.

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 doth agree to be obtained an action of execution of the land which defended to the heir. Plow. 444. 3 G. 12. 1. Co. Jat. 450. 1 And. 7.

But the body of the heir is protected, for it would be most unreasonable to subject the heir to the payment of his ancestor's debts, any farther than to the value of the effects defended. Dyer 81. pl. 52, 207, pl. 15. Mor. pl. 207. Co. Lit. 152, 252.

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, and not the land itself, were liable to execution for debt or damages, because thence 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 executor and debt of the testator, so far as he had chattels or assets, tho' he was not named in the contract; but the land was not liable to execution, because 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 imposed by the government; and therefore if the land 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 contract. 2 Huf. 19. Pisos. 460. Hob. 60.

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 assets by defence 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 the grant itself having it in his power to restrain the land for the rent, it was assumed to the heir, whether the land do answer the rent or be differved, or by an execution upon a bond in a writ of annuity. 1 Rol. Abr. 226. Polkam 87. Hob. 58. Dyer 344 b. Co. Lit. 144 b.

If the ancestor bind himself in a fiatute, recognizance, &c. the heir is liable not only as tenant, but after the death could not have his age; and cannot oblige a purchaser, whether for valuable consideration, or without, to contribute, but one heir may oblige another to contribute; as if a man feided of two cre, the one defenfible, according to the course of the Common law, the other in Borough English, acknowledged a fiatute, &c. the heir at law shall oblige the Borough English to contribute; So one expecarner shall oblige the other.
other to contribute; or if the cohezor had lands, some
defendible to the heirs of the father, and some defend-
dible to the heirs of the mother, the father shall compel the heir on the part of the mother
to contribute; & all vice versa. 3 Co. 12. Sir William
Herbert's case.

By the Common law, if the heir before an action
brought against him had aliened the affects, the obligee
was entitled to recover of him, or his heirs, whatever
the writ, the lands, which he had or defecded at the time
of the original parched, had been liable. C. Lit.
102.

In consequence of this doctrine, that the lien shall have
relation to the time of the original parched, it hath
been held, that if there had been two creditors, that
T. S. whole heir is bound, viz. A. and B. and A. files
an original in C. B. and hath judgment thereon, Trin.
Term 2 Jac. 2. by default, and thereupon a general
ejectment is made against all the lands of the heir, and a moity
thereof is delivered to A. B. on a bill filed in B. R.
& 2 Jac. 2. has a special judgment against the affects
confed by the heir, Trin. Term 3 Jac. 2. tho' B.'s
judgment be subsequent to A.'s, yet it appearing that his
bill or original was filed before A.'s, the judgment shall
have relation thereto, and therefore he must be first satif-
ied. C. th. 245.

It is from the above case, that tho' A.'s judgment
had been on an original actually filed before B.'s, that B.
must have been preferred, because his judgment was general
against the heir, and the execution a general and common
execution by ejectment, and not against the affects only
by way of extent, and therefore such a judgment shall not operate by way of relation to the original,
but binds only as in common cases from the time of the judge-
ment given. C. th. 246. Per curia.

But to prevent the wrong and injury to creditors by
alienation of the lands descended, &c. by the 3th & 4th
& 5th. cap. 14. it is enacted, "That in all cases, where
there shall be liable to be arrested, the creditor, in regard of any lands, tenements or hereditaments
defending to him, and shall fail, alien, or make over the
same before any action brought or process fell against
him, that such heir at law shall be answerable for such
debt or debts in an action or actions of debt to the value
of the land so to him aliened, or made over in which
cases all creditors shall be preferred, in all actions
against executors and administrators, and such execution
shall be taken out upon any judgment or judgment's fo
obtained against such heir to the use of the said land,
as if the same were his own proper debt or debts; saving
thereby the lands, tenements and hereditaments lands
fief aliened before the action brought, shall not be liable to
such execution."

"Provided, That where any action of debt upon any
specialty is brought against any heir, he may plead visus
per diem at the time of the original writ brought, or
the bill filed against him; any thing herein contained to
the contrary notwithstanding. And the plaintiff in such
action may reply, that he had lands, tenements or here-
editaments from his ancestor before the original writ
brought, or the bill filed: And if, upon issue joined thereupon, it be found for the plaintiff, the jury shall
inquire of the value of the lands, tenements and hereditaments lands fief aliened, and onum demurrer, or null
nullity it shall be for the debt and dam-
ages, without any writ to inquire of the lands, tenen-
ts or hereditaments so fiefed.

Alfo if, before this statute, the ancestor had devise
d away the lands, a creditor by specialty had no remedy
either against the heir or devisee. Atr. Ep. 149.

But now, by the said statute 3 & 4 W. 3. cap. 14.
receiving that the ancestor, and the heirs, and the
specialties bound themselves and their heirs, and after-
wards by will devised of the lands, with an intent to
defraud their creditors; it is enacted, "That all wills
and renunciations, limitations, dispositions, or appointments,
of or concerning any manors, meffuages, lands, tenen-
ts or hereditaments, or of any rent, profit, term, or
receipt out of the same, whereas any person or persons
at the time of the doing thereof, or their heirs, or their
lands wills or renunciations, shall be deemed and taken (as
against such creditor or creditors as aforesaid, his, her,
or their heirs, devisees, executors, administrators and
assigns, and every of them,) to be fraudulent, and clearly,
absolutely, and utterly void, fruitless, and of no effect
(any pretence, colour, signified 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 aforesaid cases before mentioned every such creditor shall
have and may have and maintain his, her, and their action
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 pleased,
in the same manner as any heir should have been for a false
plea by him pleased, or for not confessing the lands or
tenements to him defended." 149.

Provided, That where there hath been or shall be
any limitation or appointment devisible or not devisible,
or concerning any manors, meffuages, lands, tenements,
or hereditaments for the raising or payment of any real
or void debt or debts, or any portion or portions, som
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-contract, 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, me-
ffuages, lands, tenements and hereditaments, shall and
may be helden and enjoyed by every such person or per-
sons, his, her, and their heirs, executors, administrators
and assigns, for the time and during the term of the said
appointment, devise, or disposition was made, and by his, her,
and their trustee or trustees, his, her, and their heirs,
executors, administrators and assigns, for such estate or in-
tereft, as shall be limited or appointed, devised or dis-
poted, until such debt or debts, portion or portions shall
be raifed, paid, and satisfied; any thing contained in this
act to the contrary notwithstanding." 149.

And it is further enacted by the said statute, "That
every 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 vol-
untary 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 supposed 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 security against him who was an assignee, and
refcut of the lands 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.

In debt in the hands of heir, it is pleaded visus
per diem on the day of the bill, the plaintiff replied specially, viz.
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, viz. on such a day, which
was a day after the death of the obligor, had lands by
defect from the elder of the same fee-simple, unto pratt
(plaintiff) de debts prattis prattia prattiae, et
H. praet. & foc paras et servosco, unde petit juri-
cium, according to the above statute. To this the defen-
dant 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 value of the estate in the replication, viz. $10,000, &c. de debito praebita justissimis partis, which ought to have been omitted; because the statute is express, that after the issue joined the jury shall inquire of the value, so that it is matter of impart only ex affectis, and not to the point of the issue; and by this statute the plaintiff is only to recover pro parte against the defendant with respect to the value of such alienated effects, and is not to have a general judgment against the heir, as at Common law a false plea; sed pro cur. upon debate, this replication was held good, and as it ought to be, and as that and, &c. de debito praebita justissimis partis had been omitted, it might have been a good cause of objection; for the statute doth 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 defect; and the conclusion, which (before the statute) 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. Rofflaw and Heister adjudged, 5 Mod. 122. S. C. adjudged, and that the statute was made not to create, but to prevent duction in pleading.

It seems that neither before nor since this statute the executor ought to be made a party to the suit; for the person of the heir is not entitled to actions, but with respect to the land; and if before the statute, the heir had alene before act on brought, he should not be charged for the profits he received; which is evident from the plea of riens per diem the day of the writ purchased; much less could his executor, not can 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 Nifon and Dandy adjudged. 3 Bac. Abr. 28.

If there be judgment in debt against two, and one dies, a se futurum les against the other alone, reciting the death, and he cannot plead that the heir of him that is dead has effects by defect, a demand judgment if he ought to be charged alone: For at Common law, the charge upon a judgment being personal survived, and the statute of Wifom. 2. that gives the elites, does not take away the remedy of the plaintiff at Common law, and therefore the party may take out his execution with a way he pleases; for the words of the statute are fit in electro : But if he shou'd, after the allowance of the writ, and revival of the judgment, take out an ejitl to charge the land, the party may have remedy by fuzetion, or elfe by audita querela. 1 Lev. 30. Raym. 227. 11. 21. 23. 24. 25.

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 fequestration, 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 judicium solis factis against the heir to whom cause against the decree, if the decree be enrolled of record, or if not, by bill of revivor; and when revived against heir and executor (which is the usual and regular way), the fequestration 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 fame 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 heir of the lands came by the statute, which only gives an elite for a moiety of the land in satisfaction of the debt, and therefore that could give no authority to lay a fequestration on the real estate for a mere personal duty, where the heir is not bound in the covenant. 1 Taur. 143. 3 Lev. 325. 2 Taur. 37. 959. 4.

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 defend in secpn, are affects by defect, and shall be liable, as far as they extend, to answer the ancestor's obligations. See Bro. tit. Affects, 1 Lev. tit. Affect. 1 Kol. Abr. 269. tit. Affects. See Act.

A revision after a leaf for years made by the ancestor is present affects, so that the heir cannot plead rents and profits in delay of execution of the rent and revision, though the plaintiff cannot have benefit of the revision till the leaf be determined. 1 Salt. 323. 5. Faw. 42.

2 Mod. 50. 51. Heron's Prud. 546.

So a revision exequient upon the determination of an estate for sale in possi effect, and ought to be pleaded specially by the heir, and the plaintiff in such case may take judgment of it cum accidexit. Carth. 120. per Hef.

But a revision in fee exequient upon an estate in tail is not affects, because it lies in the will of the tenant in tail to dock and bar it at his pleasure. 6 Co. 58. 1. Ros. Abr. 269.

If A. hath issue B. and C. and conveys lands to hee of himself for life, the remainder to B. in tail male, the remainder to his own right heirs, and A. dies, and the revision descends to B. his fon, and B. dies feised, and the revision descends to his son, who dies without issue, so that the tail is spent, and C. enters, these lands shall be affets to answer the debts of his father. Carth. 137. 3 Lev. 286. 3 Mod. 253. S. C. Kellow ver. Rawdon.

The lands, as has been observed, must defend to the heir; and therefore it was formerly held, that if he took by purcaha, as if the testator 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. Co. Eliz. 431. 2 Mod. 268.

But the statute of frauds and perjuries 129 Car. 2. 2. 3. it is provided that if the debts came to the heir by reason of a special occcupancy, they shall be ealeable in his hands as affects by defect, as in cases of lands in fee simple, and in case there be no special occcupancy thereof, it shall go to the executors or admininators of the party that had the estate thereof by virtue of the grant, and shall be affects in their hands.

Also by the tail Nature, por. 10. & tit. where lands are settled in truth, and defend in fee to the heir of effe- tory quoy trufl, 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 estate. Vid. 32 Car. 2. 4. 68. 322.

An act of the 12th of the 20th year of George the third, for the avoidance of an inheritance in affects, for the heir having a right in equity, that ought in equity to be liable to satisfy a bond debt. 4 Chon. Co. 148.

Tenier 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 devites all his lands for the payment of his debts; the redemption was limited to him, his heirs and asigns; and the court thought that the equity of redemption of this mortgage should be affects to satisfy creditors, or a suberant grace of an annuity. Preed. Chon. 39. Forst. and Agin.

A right without any estate in possession, reverson or remainder is not affects till it be recovered and reduced into possession. 6 Co. 58.

For more learning on this subject, see 14 Vin. Abr. and 2 Bac. Abr. tit. Heir

Veir apparent. See Drir.

Veirress, Is a female heir to a person, having an ef- tate in possession, and a estate in fee tail, where there are fewe joint female heircoes, they are called coheires. Steali- ing an heircoes, and marrying her against his will, when felony, see Marriage.

Veir-loon, [of the Saxon heores, i. e. heretres, and lond, i. e. membranu The word by time heres, in the first infancy, remote than at first it did bear, comprehending al implements of heoldhood, as tables, prel, cupboards, bedsteads.
bedfords, mainfoot, and such like; which, by the cus-
tom of some countries, having belonged to a house during certain decents, are never inventoried after the decease of the owner, as chattels, but accrue to the heir with the house, and are called heirlooms. Some stand, for Jnn. ^meti belong go 104. nature Lord R. were neither can't pennons, mortem brum quorwidum, fucceffion the hundredi fucceffion, fucceffion the fucceffion. Lady chattels, being generations, worn by the book, have fixed as evidences of their family, being the personal and ancient evidences of the late Lord Petre against the wife of the first exec- tor for a necklace of pearl, said to have been in the family for many generations, and worn as a personal or- nament by the Lady Petre for the time being, or for de- fault of such, by the Lady Dowager pr 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 heews he did not claim it in his own right, and none but a madman will inventory more alls than those that are in the house, nor will a thief claim the Lord Petre were proprietor, or not, he himself could not be witness; yet the executor, by inventorizing it, charged himself with it as alls, and there it shall be taken as such; and per Hol Ch. J. the wearing of a pearl is a conversion; and goods in grofs cannot be an heirlooms, but they must be things fixed to the tree-

Helding. A braif coin among the Saxons, equivalent to our half-penny.

Helm, Thorns or straw, Cornui. edil. 1727.

Helmuccolt. The hel-wall or end wall, that co-

vers and defends the reft of the building. From Saxon belan, to cover or heal; whence a thatcher, flifer or tiler, who covers the roof of a house, is in the weftern parts called a keller.—Isulfili edilen Domine pr quodam he-

Hemp and flax. Every perfon occupying 60 acres, to low one road with hemp or flax, 24 H. 4. e. 4. 5 Ed. e. 7. Ed. &. M. 3. fett. 2. Shall not be watered in any running stream or common pond, 33 H. 8. e. 17.

Foreigners using the trade of dressing flax, &c. to en-
joy the privileges of subjects taking the oaths, &c. 15 Gar. 15. ed. 3. fett. 9.

Duties on hemp, &c. and yarn of flax or hemp import-
ted, 2 W. & M. fett. 2. c. 24. fett. 31. 32. 4 W. & M. c. 5. fett. 2.

The tithes of hemp and flax atertainfed, 3 W. & M. c. 3. 11 & 12 W. & M. c. 2. e. 16.

Flax or hemp may be importat from Ireland duty free, 7 & 8 W. & M. 5. ed. 2. d. 2. e. 8. Penalty on workmen imbrzeating it, 1 Anun. b. c. 2. e. 18.

Bounty on the importation of hemp from the planta-
tions, 3 & 4 Ann. c. 109.

Hemp water totted, &c. from the plantations, free from duties, 3 Gar. c. 12.

Undecided flax may be importat duty free, 4 Geo. 2. c. 27.

Medium of the duties on rough flax, &c. for 7 years, to be an annual charge on the aggregate fund, 4 Geo. 2. e. 5. &d. 8. Car. L. 2. c. 107.

No drawback on the re-exportation of unwoofht hemp to the plantations, 4 Geo. 2. c. 27. fett. 7.

Against frauds in manufactures of hemp, flax, &c. 22 Geo. 2. c. 27.

Bounty on the importation of hemp and rough flax from America, 3 Geo. 4.

Vernishit, Qui eos inutitir helicfis, from the Germar beoff, a war-horfe. With us it signifies one that runs on foot, attending upon a perfon of honour or worship. Stat. 3 Ed. 4. c. 5. and 24 Hen. 8. cap. 13. It is written beoffam, An. 6 Hen. 8. cap. 1.

And stamps. A capital payment of money instead of hens at Leges: From the Saxon bim, gallina and penning, denarius, Sint queti de cheveguio & henugyio, & buckfayl & trijir, &c. Monast. 2 tom. 287. In a charter of Eto. 3 confirming many privileges to the priory of Palen, 25 Ed. 3.—Qui

Du Pefne this may be bemon, gallingaum, or a compofition for eggs. But possibly it is misspelled be-

Bicfayl for breud-pen, or head-pen. Cornui. edil. 1727.

Hendreda, A duty to the King in Cambridgeshire.

Demerit.

Hengen, (Saxon bengen) A prifon, gaol or house of correction. Si quis amitis defitus, vel aliena, ad tantum laborum numat, ut amicum non hokeat, in prima accusatius petatur in bengen, & ille solutum dace ad dei judicium modus. L.L. Hen. 1. cap. 65.

Vajntice, Significat quinctus rafuerdcius de latrane fulceiis aliqua compositione. Fleta, lib. 1. cap. 47. See Bankuit.

Pecaspete, The name with bussifanes, i.e. the mat-
er of a family: From the Saxon berrpesf, i.e. fixed to the householder, or person, &c. From the liberman rettius
digna, fis headset, fis foliator, fis in hundreds, & in pligos conitutio. Leges Canuti, cap. 4. See Vite
dertett.

Pomspunp, Olim Remeceft & pityca Petepence: From the Saxon berrpesf, fixed, and penning, denarius. See Petepence and Remeceft.

Pomspunp, (Saxon bengen) A prifon, gaol, or house of correction. Si quis amitis defitus, vel aliena, ad tantum laborum numat, ut amicum non hokeat, in prima accusatius petatur in bengen, & ille solutum dace ad dei judicium modus. L.L. Hen. 1. cap. 65. See Bankuit.

Petral, Veralt, or Peralto, Italian heralds, Fr. be-

Pomspunp, Olim Remeceft & pityca Petepence: From the Saxon berrpesf, fixed, and penning, denarius. See Petepence and Remeceft.

Pomspunp, (Saxon bengen) A prifon, gaol, or house of correction. Si quis amitis defitus, vel aliena, ad tantum laborum numat, ut amicum non hokeat, in prima accusatius petatur in bengen, & ille solutum dace ad dei judicium modus. L.L. Hen. 1. cap. 65. See Bankuit.
or other bodies: The Roman call them pluraliter Freidetis, P. civ., lib. 19, describe them thus: Hic et hic apud
apparitores ministri, quos haldon dicunt, quorum praefedit
arborum Rex vacuatur; hi beli et pacti notant; ductus, comitiubus & Regi fatti insignia optant, ac eorum funera
curant. Nym more, they are the judges and examiners
of the church's offices at the coronation of Princes, manage
and perform such like: There is one and the same use of them with us and the
French, whence we have their name; and what their
office is with them, see Lexpau., lib. 1. De Mynfr.
Fianc. cap. 90. Herald. There are divers of them with us,
whence being the chief, are called Knights, and of
them of Garter is the principal, instituted and created
by Henry the Fifth, Stan's Annals, p. 584. whose office is
to attend Knights of the Garter at their solemnities,
and to maschall the funerals of all the great nobility; as
Princes, Dukes, Marqueses, Earls, Viscounts and Baronets.
And in the case of arms in Ralgher and Perriphus's cafe, we read
that Edward the Fourth granted the office of King
Herald to one Garter, cum feudis & pretitis ab antiquo,
&c. fol. 12. The next is Clarevines, ordained by Edward IV,
for attaining the dukedom of Clarence, by the
death of his brother Grace, whom he beleaved for aspiring
to the crown; and the heralds, when they belonged
to the Duke of Clarence, a king at arms, and called him
Clarevines; his proper office is to maschall and dispose the
funerals of all the lesser nobility, as Knights and Esquires,
through the realm, on the South side of the
Trent. The
third is Norrey, or North-roy, whose office is the fame on
the North side of the Trent that Clarevines 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 Duke,
&c. in martiall executions, viz. York, Lancaster, Sower-
set, Richmond, and Wiltshire. Lastly, there are four others
called Hambly or Purforis 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 Bleau-mant, Rouge-croix, Rougetragen
and Portelli. These heralds are by some authors called
Narsies, and by the ancient Romans Vexillia, who
were priests. Nam Nama Pompillus deini cultus inflation
in alto partes diesit, & inuam fuscum ordinum cito
ordes constituit. & septum partem foar cistitutionem
collis et urbicem ad vivam. Societates: Erent autem
ex opininis demibus vitri offerti; & quorum partes in ovorum
venditum, ut fi diuiti publico inopine praebentur, neque jussum
abdum aquaticum alicuius acceptur, sed iuris
nom. 12. Kings at arms are mentioned in flat. 14 Car.
2. 33. Of these, see more in Spelman's Glossary. Cowell,
edill. 1727.
By the law of arms and heraldry, every one who is
not a peer or heir prescriptive in any of those
dangerous sort, ought to be laid betwixt two officers of arms
by the arms
before the Earl Marshal of England, or his deputy, and
before him are to go four officers of arms, whereas
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
Marshal, of which he will feign from before, and the
head, and the collar of SS about his neck, and after
wards the wine poured upon his head. Lc. 248. 32 Eliz.
B. R. Detheek's cafe.
Uertlatt, (Harbohydram.) Signifies the fruit of the earth,
produced by nature for the bite or mouth of the cattle;
but it is most commonly used for a liberty that a
man hath to feed his cattle in another man's ground, as
pro jure dep saboti aculum foetum ut in festis, says the
taught Spelman.
Hertch, (Hercham.) Signifies, that there hath a herd of a
forest by patent may have trespas for the graze, but not for trees or the fruit of
them; and he may take beasts damage-feast, and have quere clamyrum friget, and by such grant may inclose the
forest. D. 255. b. pl. 40. Trin. 11 Eliz.
Grantee of herbage may include, and may have action
2 Roll. R. 356. cites D. 285. But the law that he hath
herbage may include, yet he that hath reasonable herbage
Grantee of herbage of a park cannot dispart it. Arg.
Geol. 419. Trin. 21 Jan. B. R. in the cafe of Lord Zamb
gard. Page 459.

A lease was made of a manor with all gardens, or-
chards, yards, &c. and with all the profits of the
wood, excepting to lef for acres, to take at his pleasure; for
Dyer. The wood is not comprised within the lease, but
the leffe shall only have the profits, as parishage, herbage,
&c. 11 Eliz. in C. B. 4 L. S. 8. &c.
Herbaguam antenius. The first crop of graze or hay,
in opposition to after-math and second cutting.—Dicent
good off common via, & sea communis pofura, quen famum
& anterius herbaguam amunicia. Antq. Parochial,
pag. 459.
Hereter, or Heretbry. An inn. Cowell, edit. 1727.
Herterwe, or Heretbryng, (from the French herer-
ther, that is, heretis accipere,) Signifieth an officer in
the King's house, who goes before and allows the noble-
men, and those of the houseold their lodgings. Kitchin,
fol. 176. used it for an innkeeper.
Herberettiam. Lodginges to receive guests in the way of
hostelry and hospitable living, ed. 1727. 4 L. S. 8.
Herbergotts, Spent in an inn. Cowell, edit. 1727.
Herberitch, To harbour, to entertain, from herber-
gum, herterga, Saxon hæra berg, a house of entertain-
ment.—Balliit præceptum civibus fudantium damnationem
doom to all who dwell within the
and ad household populum in anno Yn-
Hence our herberger or harbinger, who provides harbour
and house-room, &c.
Heret, A harrow, Lat. horca. Flota, lib. 2. cap. 77.
Cartuc & hercis reparare, and in Domusjoy, per Guile-
fol. 760. Hoba Rex, &c. unus jumag de era &c. &c.
Hyp. 270. Hererich, (from the French heres, to harbour.) Ar-
abant & hercubant ad curiam Dominum, I. e. they did plough
and harrow at the manner of the lord, 4 Hyp. fol. 270.
Herdwick, or Heredes, (Heredescc) A grange
or place for cattle and husbandry. Et unus heredc-
iejuscecdum, et unus jumag de heredc eorum de
jamin. Ang. 3 part.
Herdwier, Herdives, Herdfman, or herd, is
fomary labours done by the shepherds, herdfmen, and
other inferior tenants at the will of their lord. Cowell,
edill. 1727.
Herdwicke, The King's edile, commanding his bindings
into the field: From the Saxon bares, exercitus, and laps,
a menefer. Cowell, edill. 1727.
Hereditamenta, (Hereditamenta.) Signify all such
things immovable, be they corporeal or incorporeal, as
a man may have to himself, and his heirs, by way of inher-
tance; (see 32 Hyp. cap. 2. or not being otherwise
bequested, do naturally, and of course descend to him
and his heirs, as the next heir of blood fall short in the com-
pass of an executor or administrator as chattels do. It
is a word of large extent, and much used in conveyances
for the grant of hereditaments, tiles, feignorises, manors,
houses and lands of all sorts, charters, rents, feruices
advowson, commons, and whatever may be inherited,
will pat. &c. cloth. &c. &c. 11 Hyp. fol. 6. Hereditamenta est omni quod justerit hereditario ad hereditam tramont.
Heredictamenta corpora (according to Judge Dodecric.) are rece-
nues local, and of annual value. Hyp. of Wales, fol.
9. 70, condition is without question an hereditament.
3 Rep. b. 25. Trin. 25 Eliz. in the Mardips at Hodebury's
cafe.
Writ of error is an hereditament, but by the Common
law cannot be forfeited or escheat. 3 Rep. 2. S. G.
Verdict, the (Hercis.) Among Protestants, it is said to be a false opinion repugnant to some point of doctrine clearly and necessarily established in the temporal courts by the Christian faith, or at least of most high importance. 1 Hawk. P. C. 3.

Anciently, under the general name of hereby there have been comprehended three sorts of crimes: 1. Adultery, when a Christian apostatizes to Paganism. 2. Wicercraft. 3. Forged heresy, which seems to be an apostacy from the established religion; for which, and for several of determining, punishing, and the difference between the Civil and Imperial laws, Popish canons, and the laws of England concerning hereby, see a large account in 1 Hal. Hyf. P. C. 383 to 410.

It seems difficult precisely to determine what error will amount to hereby, and what not; but the statute E. E. cap. 1, which erected the high commissiion court, having restrained it to such as are either determined by scripture, or by one of the 4 fir general councils, or by some other council, by express words of scripture, or by parliament, has never been thought by any learned man, in the different courts, to be contrary, or imaginable. Yet, I have observed, that there is scarce any the smallest deviation from them may be reduced to hereby, according to the general generality, latitude and extent of their definitions and descriptions; from whence he observes, how miserable the servitude of Christians was under the Papal jurisdiction, who used to arbitrary and unlimited a power to determine what they pleased to hereby, and then, united appelation presbyter, subjecting men's lives to their sentence. 1 Hal. Hyf. P. C. 383, 389.

According to the Common and Imperial law, and generally by other laws in kingdoms and states where the ecclesiastical jurisdiction was the judge of hereby, and hereby they obtained a large jurisdiction touching them; 1 Hal. Hyf. P. C. 384.

Hence it is, that by the Common law with us, the conviction of the clergy or provincial synods, might and frequently did proceed to the pencening of heretics, and to the demand of the ecclesiastical judge was the judge of hereby, and hereby they obtained a large jurisdiction touching them; 1 Hal. Hyf. P. C. 384.

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It is also agreed, that every bishop may convict persons of hereby within his own diocese, and proceed by church censures against those who shall be convicted; but it is not within the power of the bishop, or the ecclesiastical judge, to be delivered over to the secular power; and this being signified under the seal of the ordinary into Chancery, the King might thereupon by special warrant command a writ of habeas corpus to issue, if this were a matter that lay in his discretion to grant, suspend or refuse, as the case might be circumstanced. 1 Hal. Hyf. P. C. 392.

For humble and pacific means to have no cure of hereby, either to determine what it is, or to punish the heretic as such, but only as a disturber of the public peace; and that therefore, if a man be proceeded against hereby, in the ecclesiastical courts, he may be delivered over to the secular power; and this being signified under the seal of the ordinary into Chancery, the King might thereupon by special warrant command a writ of habeas corpus to issue, if this were a matter that lay in his discretion to grant, suspend or refuse, as the case might be circumstanced. 1 Hal. Hyf. P. C. 392.

But it seems agreed, that regularly the temporal courts have no cure of hereby, either to determine what it is, or to punish the heretic as such, but only as a disturber of the public peace; and that therefore, if a man be proceeded against hereby, in the ecclesiastical courts, he may be delivered over to the secular power; and this being signified under the seal of the ordinary into Chancery, the King might thereupon by special warrant command a writ of habeas corpus to issue, if this were a matter that lay in his discretion to grant, suspend or refuse, as the case might be circumstanced. 1 Hal. Hyf. P. C. 392.
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If in repliuen the defendant avows for an heiror 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 so long live, rendering rent, and rendering and paying after the death of the said A. his executors and assigns, his heir or beft left beft for an heir, or 501. at the election of the heir, his heirs or assigns, and A. assigns to J. S. and dies, on whom the leffer ditaire; and upon order of the indenture it appears, that the clause for the heiror was rendering, and paying to the leffer, his heirs and assigns, after the death of the said A. B. and C. and every of them, his or their beft lease in the name of an heiror, or 501. &c. Then the leffer beft intituled to an heiror on the death of A. B. or C. yet ought he to have set it forth according to the indenture, and not to have avowed for an heiror after the death of A. his executors and assigns, when there are no words which make an heiror payable on the death of the executors or assigns. C. R. 237. 2 M. 6. 321. 3 Med. 415.

And if by the custom of a cophold manor the lord may grant a cophold to three persons, to hold to them the leases in quieton and corners in charta, & non aliis, for three lives, and that on the death of every tenant the lord should have his beft beft for an heiror, and a grant is made to J. S. and his assigns, to hold to him for his own use, and the lives of the two others: This at least is a good grant for the life of J. S. though not strictly purvue to the cophold, and the lord on his death shall have an heiror; but he would have a better than the death of the Cenlent. 31. 3 Med. 415. because they were never his tenants. 6 Med. 93. 1 Salk. 180. 8. C.

It seems to have been always agreed, that for an heiror cuftorn the lord might feize the best beft beft of the tenant, or what ever else was due as an heiror, wherever he could find it. B. c. 2. 3. 28.

But according to some ancient opinions, the lord could only ditaire, but not feize for an heiror-service; because they fly they, it lies in render, and not prender; also the form of pleading is, that he was seized thereof by the hands of the tenant, which would be absurd, if the lord had such a property therein as he might feize it as his own. Daltor and Student, Dialogue 2. cap. 9. N. Bendl. 30. 47. 92.

But it hath been solemnly adjudged, that for an heiror-service; or for a heiror referred by way of tenants, the lord can ditaire or ditaire and ditaire; when the grant agrees that the lord shall on the death of the beft beft, the lord hath his election which beft he will take, and by feizing thereof reduces that to his possession, wherein he had a property at the death of the tenant, without the concerning act of any other person; and it may happen, where the leflee relieves 26. for robbe, for there the lesslee has his election which he will pay, and being to do it shall the lord cannot feize, but must ditaire. Prec. 96. 589. 26. 47. 98.

Allo though the lord may either feize or ditaire for an heiror-service, yet he can only feize the proper beft of the tenant, but he may ditaire any man's befts which are upon the land, and retain them until the heiror be paid. C. R. 260.

So it hath been ruled, that for a heiror cuftorn or service the lord may feize as well in the manner as out; but if he ditaire, it must be in the manner. 1 Salk. 390. 31. 92. 8. 11. 3 Med. 251. 1. 92. 31.

But it is said, that this liberty must be understood to be annexed to ancient tenures, on which the lords had many privileges, and not to be extended to those which are created within time of memory, upon particular reservation; for where a lease was made of lands for 99 years, if A. and B. thought so long live, reserving a yearly rent and heiror, or 401. in lieu thereof, after the death of either of them, provided, that no heiror shall be paid after the death of A. lving B. and A. and B. being both dead, and consequently the lease determined; the court was divided in opinion, whether the leffer could ditaire for the heiror or not. 1 Salk. 81. 3 Med. 231.
Regulations of the herring fair at Yarmouth, 31 Ed. 3.

The contents of barrels of salmon, herrings and eels, with rules for their package, 22 Ed. 4. c. 2. 11 H. 7.

Penalty of £5 for stealing or changers herrings not well salted, packed and casked, 5 El. i. 6. sect. 6 & 7.

Allowance on the exportation of herrings, §. 5 & 6 H. & M. c. 7. sect. 10. 9 & 10 H. 3. c. 44. sect. 15. 16. 17. 5 Geo. 1. c. 18. Of white herrings from Scotland, 5 Ann. c. 6. art. 8.

One of exporter that herrings were cured with salt that paid duty, 5 Ann. c. 29. sect. 6. altered by 6 Ann. 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.

Effabilitation of the British white herring fishery, 23 Geo. 2. c. 24. 26 Geo. 2. c. 9. 28 Geo. 2. c. 14.

Officers are 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 herring 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 serum may be used in the herring fishery as are not 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.


Heworth, A furrey, from the Sax. Saxon, brida, dimidi, and bursting, vel fadiger. Quia qui fadiger, debentur se quandomque conatus. Du Fréne in voce heworth.

Heytesbury, A formerly of the county of Wilt., and a manorial, the Trench of the king, and a manorial. Trench and the county of the king's writ went not: But by the flat of 14 El. c. 13.

Herts, 300. 300.

Hexam and Hexamhoith: shall be within the county of Northumberland. See 4 Ingl. fol. 22. It was also of old a bishopric by the name of Episcopatus Hugonfeldeby. See Ad. Ang. 2 por. fol. 691.

Hypoth. See Hypoth.
way; and that any such carriage may be called the King's highway; and that a river common to all men may also be called a highway; and that nuisances in any of the said ways are punishable by indictment; for either, if they were not be punished at all: For they are no nuisances; but by keeping down the highways, to some particular persons; because if such action would lie, a multitude of suits would ensue. But it seems, that a way to a parish church, or to the common fields of a town, or to a village, which terminate there, may be called a private way; because it belongs not to all the King's subjects, but only to the particular inhabitants of such a parish, house or village, each of which, as it seems, may have an action for a nuisance therein.  

Palm. 389. Cr. Etj. 63. 664. 1 Vent. 180, 258. 3 Kad. 28. Cr. Lit. 56. 6 Med. 225. 1 Harn. P. C. 201.

If passers have used time out of mind, when the roads are bad, to go by cutlets on the land adjoining to a highway in an open field, such cutlets are parcel of the highway; and therefore if they be sown with corn, and the track found, the King's subjects may go upon the corn. 1 Roll. Abr. 390. Cr. Cor. 526. S. C.

That every highway is to be the King's; yet this must be understood so as that every highway the King and his subjects may pass and repass at their pleasure, 2 Ed. 4. 9. 1 Roll. Abr. 392.

But the freehold, and all the profits, as trees, &c., belong to the lord of the soil, or to the owner of the lands on both sides of the way. 1 Roll. Abr. 392.

Also, the lord or owner of the soil shall have an action for trespass for digging the ground. 8 Ed. 4. 9. 1 Roll. Abr. 392.

But the lord of a rape, within which there are ten hundreds, may prefer to have all the trees growing within an highway within this rape, tho' the manor or land adjoining belongs to another; for alone to take the trees is a good badge of ownership. 1 Roll. Abr. 392. 1 Brow. 42. Nelf. 141.

1. If a man hath a right to a way; how such right must be claimed; and whether a highway may be changed?

2. If the owner is obliged to repair it by the Common law, and by reason of turbulence, tenantry, or prescription.  

3. If who are compellable by statute to repair the highway.  

4. If shall be affirmed for repairing the highway; and of other profits, and lands setted in trust for that purpose.  

5. Of enlarging the highway.  

6. Of appointing surveyors of the highways, and in what manner they ought to execute their office.  

7. Of stopping a highway, and other nuisances therein by the Common law.  

8. Of hedges and ditches, trees and bushes near and in the highways; of removing other encroachments; and the punishment of persons for taking away things made use of for the benefit of the highway.  

9. Nuisances by drawing a carriage with more than six horses, or length, and by having empty carriages in the highway.  

10. Nuisances by unlawful breach and tire of schools; and by riding upon carriages, or mischief of the drivers.  

11. How perfect charges with respects relating to the highways are to be proceeded against.  


13. If a man hath a right to a way; how such right must be claimed; and whether a highway may be changed.

A man may have a way either by prescription or grant, by reservation, or by way of privilege, and shall not in a war. clauded, be obliged to throw which way he claims it; but it will be sufficient for him to allege that it, &c., but in a bar or replication he must show his title precisely. 1 Vent. 774. 2 Lev. 148. 3 Kad. 528, 531. St. John v. Atch.  

Vol. II. No. 22.

But he who preaches for a way, must fly in certain whether it is a foot, horse, or cart-way. Rel. 163. adjourned upon demur.  

It in bar of an action of trespass the defendant pleads that T. S. and all those whose estate he hath in certain parts of his own lands, and themselves and their servants, time out of mind have used a way in & traverse the place where, &c., to the said lands; this is a good plain case if it is not shown a pass lane the said way is claimed, and the other, because it is claimed by prescription, which ought not to be laid in cert. lcs. 2 Ye. 103. adjourned.  

If A be adjudged a fee of a backside in a town, and the high-street is next adjoining thereto of the East, and there is a gate in the backside which incloses in the street, the gate being in the East next to the street, and A is also feised in fee of a messuage and a piece of land near adjoining to the backside of the North of the backside, and by deed appoints B of the messuage and piece of land which are of the North of the backside, and by the same deed further grants to him and his heirs liber, ingressum, egressum, & regregium in, & extra rad. &c., and prescribes to the said messuage and piece of land, for the liberty is granted to him of ingress and egress in, & extra rad., &c., for to this the said messuages and pieces of land, for the liberty is granted to him of ingress and egress in, & extra rad., &c., to the said land, and appurtenant to the premises before granted. 1 Roll. Abr. 351. Halder and Holman.  

In trespass for breaking his chaise 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 Blackare, &c., the plaintiff replies, that at the time of the trespasses the defendant went with his carriages from D. to Blackare, &c., and being to a mill, he will not maintain his action, for when the defendant was at Blackare, he might go whither he would. 1 Roll. Abr. 391. Sanders and Meyin, and fee 1 Med. 190.  

But it seems, that if a man hath a way for carriages from D. to Blackare over my clofe, and after he purchases land adjoining to Blackare, he cannot use the said way for 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 shew the special matter, and that he used it for the land adjoining. 1 Rel. Abr. 391.  

A way might be claimed as appentant or appurtenant to a house, because it is on an easement, and no interest. Yebo 159. But it may be good appenchant thereunto, and as such pass by grant thereof. Cr. Jas. 190.  

If in bar to an action of trespass the defendant pleads, that if S. and all those whose estate he hath in certain lands, time out of mind for themselves and their servants, have had and used passagium in, &c., & traverse the place where, &c., & as justifies as servants, this is no plea, for passagium is properly a passage over water, and not over land; and he ought to have preferred in the way, and not in the passage, and should have used such words as are proper and known in the law. Yebo 163. adjourned.  

A man may prefer for a way from his house thro' a certain clofe, &c., to church, though he himself has lands next adjoining to his said house, whereof which necessity he must shew pass for; for the general prescription shall be applied only to the lands of others. Palm. 387, 388. 2 Rol. Rep. 397.  

Upon trial of an action of trespass a cafe was made, that the place where the supposed trespass was committed was formerly the property of the plaintiff, who since years since built a street upon it, which has ever since been used for a highway; and that defendant had land contiguous, parted only by a ditch, and they had a bridge over the ditch, the end whereof reflected in this highway. And it was affirmed for the defendant, that by the plaintiff's making it a street, it was a dedication of it to the public; and therefore however he might be liable to an indictment for a nuisance, yet the plaintiff...
could not sue him as for a trespass on his private property. Sed per curiam; it is certainly a dedication to the publick, so far as the publick has occasion for it, which is only for a right of passage. But it never was underlaid to be a transfer of the absolute property in the soil. So the plaintiff had judgment. Stron. 1004. Hill. 8 Cas.


A man cannot allege, that he cannot use his way as well as he could before, but must plead that he could not use it at all. 1 H. 52. 53.

An ancient highway cannot be changed without an injunction found on a writ of All good durnons, that such change will be no prejudice to the publick; and it is said, that if one change a highway without such authority, he may flip the new way whenever he pleases; nor can he name a subject in an action brought against him for going over such new way, justify generally as in a common highway, but ought to sue for such change, by way of rescipe, 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. Cr. Cn. 665. Vangb. 341. Wh. 141. 1 How. 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, yet the highway continues in the new channel in the same manner as in the old. 22 Aff. 53. 1 Rol. Abr. 350.

2. Who are obliged to repair the highways by the Common laws, and where a person shall be liable by reason of inclosure, 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 Rol. Abr. 39. March 26. 1 Vent. 90; 183. 8 Hn. 7.

Also if a parish is part in one county, and part in another, and 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 a action upon 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. 111. 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 precinct of the parish, then the way in all the ways of the parish, it must be alleged in pleading, that by special prescription, or ratline tenure, such a part of the parish de temps dont, &c., have been charged with the repairation of the ways. 1 Vent. 256. 1 Med. 301.

But though the parish be obliged of common right to repair the highways in it, yet it is certain, that particular parsons may be bound to repair the highway, by reason of inclosure or prescription; as where the 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 Ed. 204. 300. 1 Sid. 404.

Also it is said, that if one incloses land on one side, which hath anciently been inclosed of the other side, he ought to repair all the way; but that there be no such ancient inclosure of the other side, he ought to repair but half the way. 1 Sid. 404.

There was an old hedge time out of mind belonging to A., on the one side of the way, and B., having land lying on the way, makes a new hedge.

there B. shall be charged with the whole repair. 1 Sid. 404. 2 Keb. 165. 2 Sound. 157.

But if A. makes a hedge on the one side of the way, and B. on the other, they shall be chargeable by moieties. 1 Sid. 404. 2 Keb. 165.

But it seems clear, that wherever a person makes himself liable to repair a highway by reason of inclosure, that by throwing of it open again, he thereby frees himself of the burden of any future repair. 2 Sound. 168.

Particular persons may be bound to repair a highway by prescription; and it is said, that a corporation aggregate may be charged by a general prescription, that it ought and hath used to do it, without any new consideration in respect whereof they had used to do it, because the corporation is a body, neither is it any plea, that they have done it out of charity; but it is said, that such a general prescription is not sufficient to charge a private person, because no man is bound to do a thing which his ancestors have done, unless it be for some special reason; as having lands devoted to him holden by such service, &c., but it seems, that an indictment charging a tenant of lands in fee with having used of right, to repair such a way ratline terre fiat, without adding, that his ancestors, or those whose estate he hath, have so done, is sufficient, for 'tis implied. 27 Aff. 48. 27 Id. 4. 38. Tr. Prefcription 49. 70. Keil. 53. a. Lard. 151. 179. 456.

And it seems certain in all these cases, whether a private person be bound to repair a highway by inclosure or prescription, that the parish cannot take advantage of it on the general issue, but must plead it specially; and that therefore, if to an indictment against the parish, for not repairing a highway, they plead Not guilty, this shall be intended only that the ways are in repair, but does not go to the right of repARATION. 1 Med. 111. 2 Keb. 301. 1 Vent. 256.

3. Thee are compellable by statute to repair the highway.

By fl. 3 & 3 Ph. c. 8. sect. 2. & Mer. 6, and 2 Car. 2. c. 12. sect. 9. "The parishioners of every parish shall endeavour themselves to amending of the highways therein, and shall be chargeable thereunto as followeth, that is to say, Every person for every ploughland in tillage or pasture, that he or the shall occupy in the parish, and every other person keeping there among any stock of cattle or any other beast, or any other necessaries to meet the things convenient for that purpose, be liable to work either men, women or boys, upon every day, every forty days making default, on the highway, and every houholder, and also every cottager and labourer of that parish able to labour, and being no hired servant by the year, shall by themselves, or one sufficient labourer for every of them, upon every of the fast days, work and travel in the amendment of the said highways, upon every of the fast days making default, to be thought needful by the surveyors, to be occupied upon any of the fast days, that then every such perfon that shall have set any such carriage, shall fend to the fast work, for every carriage to fered, two able men, three to labour for the day, upon pain to lose for every man not to fent to the fast work, twelve-pence; and every perfon and carriage above said, shall have and bring with them such fhovels, spades, picks, mattocks, and other tools and instruments: as they do make their own ditches, and do such as be necessary for the said work: And all the said perfons and carriages shall do and keep their work as they shall be appointed by the said supervisors, or one of them, eight hours of every of the said fast days, unless they shall be otherwise licensed by the said supervisors, or one of them."
the city of London,) that shall be affi detached to the payment of any subsidy to her Majesty, to five pounds in goods, or forty shillings in lands, or above, during all such time as they shall stand so detached, and not altered, and being any of the parties chargeable for the amendment of the highway law, but having attained the same two able men yearly to labour in the highways at the times appointed.

And it is further enacted by the said statute, sect. 3. "That every other that shall occupy a plough-land in tillage or pasture, 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 thereof; for the setting whereof 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 before that statute made, or of concerning the highways, any thing in them, or any usage or custom to the contrary in any wife notwithstanding." 

And it is further enacted by the above-mentioned statute of 72 Car. 2. c. 12. sect. 4. "That if in such places there be more than one surveyor or teams for the amendment of the highways, but the usage and practice in the carry flones, gravel, earth or other materials for such amendment, upon the backs of horses, or by any other kinds of carriages; that in all such places the inhabitants using any such carriages or other carriages, shall fend in such their horse as are accustomed to such kind of la bour, and such their other carriages, with able perfons to work with the same, in like manner, and under the like directions, forfeitures and penalties, as by any former statute for repairing of highways, is appointed for such carriages and teams.

In the execution of these statutes, the following opinions have been holden. 1. That clergy men are within these statutes in respect of their spiritual possessions, as much as any other persons in respect of any other possessions. 3 K. 255. 476. 1 Vent. 273. 2 Inf. 740. 2 Hanb. P. C. 204. -By statute 30 Geo. 2. c. 25. sect. 22. Perfons for serving themselves as surveyors in the Militia, shall during the time of such service be exempted from peremptorily doing any highway duty, commonly called statute-work.

2. That he who keeps a draught ought to fende a team, though he occupy no land in the parish, and in such manner as he who occupies a plough-land ought to fende a team, though he keep no stock. Exem. 185. 356. Dall. cap. 26. 2 Keb. 617.

3. That notwithstanding the words of the statute 39 & 30 Phil. & Mar. c. 6, extend only to the occupiers of land, yet if the owner neither occupy them, nor let them, but suffer them a lie free, he shall be charged as much as if he had occupie them only, and not suffer for his negligence. Palm. 580. 2 Ed. Rep. 412.

4. That he who keeps a draught and but two horses, ought to attend with them at the time appointed, and to carry such loads as they are able to carry. Dall. c. 26.

5. That it is no excuse for parishioners indicted at law or not repairing their highways, that they have done their full work required by statute; for the statute being in the affirmation, doth not abrogate any provision of his kind by the Common law. Dall. cap. 26. 1 Hanb. 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 Phil. & Mary, and other subsequent statutes, are chargeable to be fended for that purpose. 3 Adb. 96. 1st and Whiteh,
lowed by the said justices in their special fessions, shall be collected and gathered by the said surveyor or surveyors of the highways; and if any person or persons refuse to pay the monies so aslected on him or them, that then the same shall be levied upon the said surveyors, by distress and sale of the goods and chattels of the persons refusing, rendering to the party the overplus, reasonable charges for making the said distress first to be deducted.

And it is enacted by the said flate, 3 & 4 W. & M. c. 12, sect. 14, "That no fines, illde, penalty or forfeiture, for more than two years, in case of default, shall be levied and paid into the county, or the county court, but shall be levied and paid into the hands of the surveyors of the parish or place, to be applied towards the repair and amendment of such highway; and that if any fine, penalty or forfeiture, imposed on any parish or place, for not repairing the highways, shall hereafter be levied on any one or more of the inhabitants of such parish or place, that then such inhabitant or inhabitants shall make his or their complaint to the justices of the peace at their special fessions; and the said justices, or any two of them, are by the said statute empowered and authorized by warrant under their hands and seals, to cause a rate to be made, according to the manner aforesaid, for the reimbursing such inhabitant or inhabitants the money so levied on him or them as aforesaid; which rate so made and confirmed by two justices as aforesaid, shall be collected and levied by the surveyor or surveyors of the highways of such parish or place so presented to or indicated as aforesaid, and the said surveyors shall, within one month next after the making and confirming the rate aforesaid, pay unto the inhabitant or inhabitants, such money so levied on him or them as aforesaid.

It is enacted by the said statute of 22 Car. 2. c. 12, sect. 2, "That where any lands have been, or shall be given for the maintenance of caufeyes, pavements, highways and bridges, all such persons that are or shall be enfeoffed or trufred with any such lands, shall let them to farm at the most improved yearly value without fine; and that the justices of the peace in their open fessions shall inquire by such ways and means as they think fit, into the value of all such lands given or to be given, and order the improvement and employment of the rents and profits thereof according to the will and direction of the donor of such lands, if they find that the persons so intrusted have been negligent or faulty in the performance of their trust, (except such lands have been given to the use aforesaid, to any court or corporation, or to any person, company or society of this kingdom, which have victors of their own,) any law, statute, usage, or custom to the contrary notwithstanding.”

5. Of enlarling the highway.

It is enacted by 13 Ed. 1. commonly called the statute of Windsor, cap. 5, "That highways leading from one market-town to another shall be enlarged, so that there be neither dyke, tree nor bough, whereby a man may lurk to do hurt, within two hundred foot of the one side, and two hundred foot of the other side of the way; and that the said authorities shall, in all cases, rectify great trees, &c., and if by default of the lord that will not avoid the dyke, understand, or hedges in the manner aforesaid, any robberies be done therein, the lord shall be answerable for the felony; and if murder be done, the lord shall make a fine at the King’s pleasure: And if the lord be not able to fell the woodlands, the country shall be held ill his behalf.

"And the King willeth, that in his demesne lands and woods within his forest and without, the ways shall be enlarged, as before is said. And if peradventure a park be taken from the highway, it is requisite that the lord shall for his part pay the space of two hundred feet from the highways, as before is said, or that he make such a wall, dyke or hedge, that offenders may not pass nor return to do evil.

Also it is enacted by the above-mentioned statute of 3 & 4 W. & M. c. 12, sect. 15, "That the surveyors of the highways shall make every cure-way leading to any market-town, eight feet wide at the least, and as near as may be even and level.”

And it is further enacted and declared by the same statute, sect. 21, "That no house, caufeway, or caufeway for the taking of such taxes and tolls, nor the goods and chattels of publick highway, be less or under three feet in breadth.”

Also it is enacted by 8 & 9 Ed. 3. cap. 15, sect. 1, "That the justices of the peace of any county, city, riding, division, liberty, or place, or the major part of them, being five at the least, at their quarter-fessions, shall on their oath examine by distress and sale of the goods and chattels of the persons, who shall be found defaulting in their respective counties, divisions, ridings, liberties or places, so that the ground to be taken into the said highways shall not exceed eight yards in breadth; and that the said power do not extend to pull down any house, or to take away the ground of any garden, orchard, court or brickfield; And for the satisfaction of the persons of the owners of, or may be interested in the said ground that shall be laid into the said highways, the said justices are by the said statute empowered to impanel a jury before them, and to administer an oath to the said jury, that they will affix 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 line of the highway that shall be so enlarged, and also satisfaction to any person that may be affected thereby, for the enlargement of the said 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 deriv’d out of them; and the ground that shall be laid into any highway by virtue of the said act, shall be afterward a publick highway to all intents and purposes whatsoever; and the said justices shall have power to order one or more affembements or affidgments to be made, levied or collected upon all and every the inhabitants, owner, or occupier of lands, houses, tenements or herdements, in their respective parishes or places that ought to receive the same, to such person or persons, and in such manner as the said justices at such stellements 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 enlargement of the said highways, and for the making the said ditches and fences: And the said affidiments shall, by order of the said justices, be levied by the overseers of the highways, by distress and sale of the goods of persons so affidicted, 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 affidiments or affidments made in any one year for enlarging of highways, shall exceed the rate of his pense in the pound of the yearly income of any lands, houses, tenements or herdements, nor the rate of his pense in the pound for personal effects.

Also it is farther enacted by sect. 3, of the said statute, "That if any one or more shall be made by the said justices for the laying out of any ground for the enlarging of highways, the owners or proprietors of the said ground shall have free liberty, within eight months after such order, to cut down any wood or timber growing upon the said ground; and upon the neglect thereof, that the same shall be laid 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.

It is farther enacted by sect. 5. of the said statute, "That any person aggrieved by any order or decree of the said justices may appeal to the judges of assize at the next assize held after the said order or decree shall be made; and any of the said judges who shall be nominated to the said justice of the peace shall reverse the said former order or decree, as in judgment they shall think fit, and if affirmed, to award costs against such appellants for their vexation and delay, and to caufe the same to be levied by diffrents and sale of the appilant's goods, rendering the overplus to the said appellants.

It is farther enacted by the said statute, sect. 6. "That any common highway shall be inclosed after a writ of Alios habemus issued, and ifquisition thereupon taken, any person aggrieved by such inclosure, may make his appeal to the quarter-sessions of the county to be held after such inclosure taken, which shall finally hear and determine such appeal; and if no such appeal be made, then the said inclosure 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 ought to execute their office.

It is enacted by the 3 & 4 Will. & Mar. c. 12 sect. 1. "That upon the fifth and twentieth day of December in every year, unless that day be Sunday, and then on the seven and twentieth, the comftables, headboroughs, tithingmen, churchwardens, surveyor 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 parish, who have an estate 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 occupants or tenants of houces, lands, tenements or hereditaments, of the yearly value of thirty pounds, if any such there be; or if there be no such inhabitants, then the said lift to be of the most sufficient inhabitants of such parish, 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 parish lies, at a special feftion to be held for that purpose within the said division, on the third day of January next following, at which it shall begin 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 feftion at some place within that division where the said feftion lies, and to give notice of the time and place where they intend to hold the same, to the said comftables, 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 feftions; and the said justices shall then and there, out of the said lifts, according to their discretion, and the largenes of the parish, by warrant under the hand and seal of them and one or more of them, as they shall think fit and approve of, being of like sufficiency as afoforeaid, to be surveyor or surveyors of the highways of every parish within the said division, or for any hamlet, precinct, liberty, tithing or town, of and in the said division, for the year ensuing, to take a survey of all the said common highways, highways and water-courses, bridges, caufeways and pavements within the parish, town, village or liberty, and to return to the justices of the peace of the county, and in default thereof shall incur the penalty afoforeaid, as if he or they had renounced or neglected to accept and execute the said office, unless he shall have some reasonable excuse for omitting the same, to be allowed by two justices of the peace of the said division, &c. And when defaults and negligence they shall think fit and proper, to be made known in any of the said highways, &c. they shall from time to time, the next Sunday immediately after sermon, give publick notice of the same in the parish church, and if the said highway be not removed, repaired and amended within thirty days after such notice given, that then the said surveyors or surveyors shall be discharged, and the highway may be opened and repaired, and amended the same, and dispofed of the said annoyance, to and for the repair of the said highway; and the said surveyors or surveyors shall be reimbursed what charges and expenses they shall be at in doing, by the parties who should have done the same, and in case of any party's neglect to pay the said surveyors their said charges, then the said surveyors shall apply themselves to any justice of the peace within the division of the county wherein such highways lie.
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 defaulters in manner aforesaid, the said surveyors shall repay all such their charges, as shall be allowed to be reasonable by the said justice, to be recovered in manner aforesaid, as is set forth by law. And for every such surveyor, as shall cause any such fees to be made and digged for gravel, sand, cinders, as is aforesaid, shall within one month next after such digging or pit made, cause the said field to be filled and topped up with earth, at the costs and charges of the parishioners; upon pain to forfeit to the owner of the said field, of the said field, for the highways hereby shall be made and digged, for every default five marks, to be recovered by action by debt, 

And it is farther enabled by the same statute, sect. 6, "That every supervisor shall within the limits where he shall be supervisor, have authority to turn a water-course, or spring of water, being in any highway, or in the pleasure ground of any of the several persons or places, whatever next adjoining to the said highways, in such manner as by the said supervisors shall be thought meetest."

But by sect. 26 Geo. 3. cap. 28. it is enacted, "That if any person shall, by reason of getting any gravel, sand, flocks, chaff, or other materials, for the making of any highways, or for the making of any water-courses, or putting down gravel, or for any other purpose, 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 such pit or hole, cause the same to be filled up, and all the materials to be brought away, 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 of one of the witnesses, may order him to fill up, properly slope down, or fence off the same; and when any fence shall be let up, may order the same to be repaired, and that he shall forthwith cause such order in ten days after his receipt thereof, or the same being left at his usual place of abode, and due proof being made, upon oath before any one justice, of the offence committed, of the service of such order, and of his refusal or neglect to comply therewith, such person shall forfeit not exceeding ten pounds, or else forthwith, 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 the several by warrant of such justice, in such way as shall be thought fit and convenient for the purpose thereof."

It is enacted by 5 El. 13. "That it shall be lawful for the surveyors of the highways, for the better proportion and amendment of the ways within their several parishes and limits where they shall be supervisors (if it shall be so to them thought meet), to make or cause to be made, and digged out of, any quarry or quarries, or any gravel, 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 highways: And that for default of any quarry or quarries within their several parishes and limits, or in default of rubish 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 parish and limits where they shall be surveyors, and no adjoining to the way wherein such reparations shall be thought needful, to make or cause to be made, and digged out of, any gravel, or cinders is like to be found, to dig or cause to be digged for gravel, sand or cinders, and likewise to gather flones lying upon any lands or grounds within the parish, and meet to be used to such purpose, and thereof to take and carry away so much as by the discretion of the said surveyors shall be thought necessary, so as not to be prejudicial to any owner or occupier of the said lands, or any other person or persons having any estate, interest, or reversion in the same, but it is provided by the said statute, sect. 6. "That it shall not be lawful to any such supervisor, by virtue of the afo, to cause any rubish to be digged out of any quarry or quarries, but only shall extend to such rubish as shall be found there ready digged, or for any quarries, or otherwise by his or their licence and command, nor shall not extend or give authority to any supervisor to dig or cause to be digged any gravel, sand, or cinders in the houfe, garden, orchard, or meadow of any person, nor that it shall be lawful to any such supervisor to cause any more pits to be digged for gravel in any several and included ground than one only; and that the same pit or hole so digged for gravel as is aforesaid, shall not by any way be in breadth or length, above the lengthen of the said house, and the breadth of the said house, and the breadth of the land the house is upon; And every such supervisor, as shall cause any such pit to be made and digged for gravel, sand, cinders, as is aforesaid, shall within one month next after such digging or pit made, cause the said field to be filled and topped up with earth, at the costs and charges of the parishioners; upon pain to forfeit to the owner of the said field, of the said field, for the highways hereby shall be made and digged, for every default five marks, to be recovered by action by debt, 

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It is enacted by 5 El. 13. sect. 7. "That where any soil hath been cast into the common highway, or common faring way, that there is a bank between the said way and the ditch, it shall be lawful for the said supervisors, &c. to make flives or other devices by their discretion, to convey the water of the said ditch, by any of the said ways into the ditch; any law, right, interest or usage to the contrary notwithstanding."

And it is farther enabled by the said statute of 3 & 4 W. & M. c. 12. "That it shall be lawful for the said surveyors, where the ditches and drains already made are not sufficient to carry off the water that lies upon the highways, or the ditches and drains laid the next adjoining to the said highways, and keep them sixured, cleansed and open, and come upon any of the said lands with their workmen for so doing."
It is said, that he who hath lands next adjoining to a highway, is bound of common right to scour his ditches; but it is said, that he who hath lands next adjoining to such lands, is not bound by the Common law so to do, without some special prescription for that purpose; and perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over into it, to which people have not been allowed by the Common law to lop the same, and it seems clear, that any person may justify the lopping such trees, so far as to avoid the nuisance.

It is further enacted by 18 Eliz. c. 10. sect. 5. "That where a ditch shall not repair, ditch, or scour any ditches, or hedges adjoining on either side, to any high or common faring way, shall be kept and repaired, and kept low, by the owner or owners of the ground or soil, which shall be inclosed with the said hays, fences, dikes, or hedges aforefaid, &c.

And it is further enacted by 3 & 4 W. & M. c. 12. "That if any occupier or occupier of lands next adjoining to any highway, shall neglect to cleanse or scour their ditches, ditches and ditches adjoining to the said highways, or the earth taken out thereof, to be carried away, and left sufficient trunks, tunnels or bridges where any cart-ways are, into the said highways, for the passage of ten days after notice thereof given by a surveyor, &c. every such offender shall forfeit five shillings, &c.

And it is further enacted by the said statute of 3 & 4 W. & M. c. 12. "That the poultries of the land next adjoining to any highways, where they are not twenty feet broad, shall neglect to cleanse or scour their ditches, ditches and ditches adjoining to the said highways, or the earth taken out thereof, to be carried away, and left sufficient trunks, tunnels or bridges where any cart-ways are, into the said highways, for the passage of ten days after notice thereof given by a surveyor, &c. every such offender shall forfeit five shillings, &c.

But it is no nuisance for an inhabitant of a town to unlace billets, &c. in the street before his house, by reason of the necessity of the case, unless he suffer them to continue there an unreasonable time. 2 Rol. Ad. 137.

Any one may justify pulling down, or otherwise destroying a common nuisance, as a new gate or houff erected in a highway; and it hath been of late holden, that there is no need, in pleading such justification, to shew that a ditch, hedges, or anything, might have been made by a Roll. Ad. 144. "That the highway, or inadmissible.

Alfo besides that all nuisances are punishable by inadmissible with fine and imprisonment, it is said, that one convicted of a nuisance to the highway, may be com- presentment for what or for asking any things made use of for the benefit of the highway.

It is said, that he who hath lands next adjoining to a highway, is bound of common right to scour his ditches; but it is said, that he who hath lands next adjoining to such lands, is not bound by the Common law so to do, without some special prescription for that purpose; and perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over into it, to which people have not been allowed by the Common law to lop the same, and it seems clear, that any person may justify the lopping such trees, so far as to avoid the nuisance.

It is thus enacted by 6 Ann. c. 29. "That if any surveyor shall neglect to put either that or any former law for repairing highways in execution, he shall forfeit five pounds, to be levied by dirifets, &c. by warrant of one justice of the peace."

7. Of lodging a highway, and other nuisances therein by the Common law.

It is clearly agreed to be a nuisance to dig a ditch, or make a hedge over-thwart the highway, or to erect a new gate, or to lay logs of timber in it, or generally to do any other act which will render it less commodious.

Kitchin 34. 1 Haw. P. C. 212.

Also it is agreed, that it is no excuse for him who lays logs in the highway, that he laid them only here and there, for that the people might have a passage thro' them by windings and turnings. 2 Roll. Ad. 137. 1 Haw. P. C. 212.

It is a nuisance to suffer the highway to be incommoded by reason of the foulefts, &c. of the adjoining ditches, or by boughs of trees hanging over it. &c. And it is said, that the owner of land next adjoining to the highway, ought of common right to scour his ditches; but that the owner of land next adjoining to such land, is not bound by the Common law so to do without a special prescription; alfo it is said, that the owner of trees hanging over the highway, to the annoyance of travellers, is bound by the Common law to cut them down, and it is clear that any other person may lop them, so far as to avoid the nuisance. 8 H. 7. 5 a. Kitch. 34. Dalh. cap. 26. 1 Haw. P. C. 212. 213.
by any hedges, trees, bushes, or branches whatsoever, and that the fun may freely flume the fads ways to dry and amend the fame.

Also it is further enacted by the above-mentioned flature of 18 El. 13, cap. 6, "That every occupier of lands adjoining to the grounds adjoining to any highway, or common farring way, where any ditching or feeworing fhould or ought to be as afofrad, fhall from time to time, as need fhall require, ditch and feewor in his own grounds adjoining to the highway, or over the ground next adjoining, may have pallage over fuch next ground adjoining; so pain of forfeiture for every time fo offending for every rod not fo ditched and feewored, twelve pence.

And by Stat. 1 Geo. I. c. 2, s. 2, feft. 8, "If any perfon who ought to fcur and keep open ditches and water-courses adjoining to highways, and not to remove any annoyances fhall, by the space of thirty days after notice given by the surveyors, neglect to do the fame, or fhall leave the earth of ditches foured in the highways for eight days, oath being made thereof by the surveyors before the juries at their fpecial fessions; fuch offender fhall pay twenty pounds for every such ditch and water-course, and keep open forfeit two flulings fhould, and for each other offence afofrad, any fun not exceeding five pounds nor under twenty fhulings, to be levied by duiffs and fide; fuch forfeitures fhall be applied by the surveyors to the amendment of the highways: And the surveyors are authorized to open new ditches and water-courses, and to remove all annoyances, and where the ditches and drains are not fufficient 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, feft. 1, "If the surveyors of the highways fhall find any highway deep and rounded, and the hedges adjoining to be fo high as to prevent the benefit of the in and winds, it fhall be lawful for fuch surveyors to make preffumpfion of fuch hedges to the juftices of peace, who live in or near the division where the highway is, at their fpecial fessions held for fuch purpofes; which juftices, or two of them, are empowered to fummons the occupiers of the lands, whose hedges are prefumed to be, to appear at the next publick meeting of the juftices, to shew caufe why fuch hedges fhould not be new made or cut low; and if it fhall appear that fuch way is deep and rounded, and damaged by the height of fuch adjoining hedges, the juftices of the peace, or their prefident, fhall then be required to inftruct fuch of the surveyors of the highways of the parish where fuch hedges are, directing fuch surveyors to leave notice in writing at the place of abode of fuch perfon, that they are required to new-make or cut low the fads hedges, within thirty days after fuch notice (provided fuch notice be given between the lat of Spelder and the 5th of February); and in case of their negleét to do the fame, the surveyors are required to exeute the hedges to be new-made or cut low, fo as fuch hedges be left three foot high above the bank.

Sect. 2. Such perfonfs as fhall negleét to new-make or cut low fuch hedges, fhall repay to the not new-made or cut low, and fuch perfonf fhall have been put to on that occafion, and in cafe of negleét to repay fuch expences within fourteen days after the fame fhall have been demanded, the juftices at their monthly or other publick meeting, in or near the division where the hedges are fituated, are to ifte out a precept to the confabiles and both liders, or other officers of the place, requiring them to levy for the payment of fuch surveyors, fuch fums of money as the fads expences fhall amount unto, upon the goods of fuch perfonfs as have negleéted to pay the fame.

Sect. 3. Provided, that nothing herein fhall alter the laws in relation to timber trees, which grow in hedges adjoining to the highways.

As to remuving trees and bushes from the highway, it appears from the above-menentioned flature of 12 Hen. 3, cap. 5, that no small tree or biff, whereby a man may lurk to do hurt, ought to be fured to stand within two hundred feet of either fide of a highway leading from one market town to another.

And it is further enacted by the faid flature of 5 El. 13, feft. 7, "That all trees and bushes growing in the highway, fhould be cut down by the owner or owners of the same, or the land, or the lands wherein the same grow, and it is also enacted by the faid flature of 18 El. 13, feft. 7, "That whenever fhall not cut down or keep low all trees and bushes growing in or next adjoining to any the fads ways, according to the intent of the above-mentioned flature of 1 El. 13, fhould forfeit ten flulings.

As it is enacted by the faid flature of 7 8 H. 3 & M. c. 12, that no tree, bush or shrub fhall be permitted to fland or grow in any highway not full twenty feet broad, but the fame fhall be cut down, grubbed up, and carried away by the owner or owners of the land or foil where the fame fhall fland or grow, within ten days after notice to him or them given by the faid surveyors, or any of them, on pain to forfeit for every neglect five flulings, &c.

As to the manner every other annoyances obftrucling the highway are to be removed; it feems 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 ufe; also it feemeth, that an heir may be inflicted for continuing an intercouch, 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 Hard. 214.

But in the Common law not having been thought sufficiently to have provided against micthiefs of that kind, it was enacted by tie above mentioned flature of 18 El. c. 10, part. 7, "That no perfon having any ground adjoining to any highway, or common farring way, leading to any market town, fhall cut or feewor any ditch, and throw or load the soil thereof into the highway, and fuffer it to be there by the face of fix months to the annoyance of the faid highway, or common farring way, upon pain of forfeiture for every load of foid to call into the highway, or common farring way, in ditching or feeworing, twelve pence: And that the surveyors may make fuches through banks occasioned by the cattling such foil into an highway, &c.

And it is further enacted by the faid flature of 3 & 4 H. 3 & M. c. 12, that no perfon fhall lay in any highway, not twenty feet broad, any fline, timber, fraw, dung or other matter, whereby the fame fhall be any ways obftrueld or annoyed; on pain to forfeit for every such obftruclion, &c. in the above-mentioned flature, &c. as fhall be faid and added. That if any timber, fraw, hay, fraw, flibble or other matter for the making of dung, or on any other pretence whatsoever, fhall be laid in any fuch highway as afofrad, whereby the fame fhall be any ways obftruclion or annoyed, the owners or polleffors of the lands next adjoining the faid fame, fhall fuffer the faid timber, fraw, hay, fraw, flibble or other matter, and have, take, and difpofe of the fame to his and their own ufe; and if any fuch owner or occupier of lands next adjoining to the faid highways, fhall negleét to clear the fads ways of the fads nuisances, he fhall forfeit five flulings, &c. and the repons of perfonps for taking away things made ufe of for the benefice of highways, it is enacted by the above-mentioned flature of 7 & 8 Will. 3, c. 29, "That every perfon who fhall pull up, cut down or remove any poult, block, great flone, bank of earth or other security, which was fet up, placed, and made for fecuring any horfe or foot cufter in a publick highway from waggons, wains and cartes, fhall, upon complaint to any juftice of the peace of the place or division where such offence fhall beproved by the oath of one credible witnes, &c. forfeit twenty flulings, one moiety thereof to the surveyors, &c. and the other moiety to him that fhall discover the fame."
9. Nuisance by drawing a carriage with more than six horses in length; and by having empty carriages in the highways.

It is enacted by the above-mentioned statutes of 22 Car. 2. cap. 12. par. 6, 7 and 8, 23 H. 3. c. 39. and also by 6 Ann. c. 29, and 9 Ann. c. 18. and 1 Geo. 1. c. 2. § 11. "That no travelling waggon, wain, cart or carriage, wherein any burdens, goods and wares shall be conveyed for hire or for sale, shall be drawn by more than five horses, as shall be employed in or about husbandry and manuring of land; and in carrying of hay, straw, corn unthreshed, 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; and if any horse or horses shall exceed the number as shall be employed in or about husbandry and manuring of land, and in carrying of hay, straw, corn unthreshed, 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 be levied on the owner, or driver of such cart or waggon, to help such insufficient horses up such uphill, 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 be committed, for the repairs of the said highways, and the other moiety to him who shall recover thereby and profectute for the same, to be levied by diists of all or any of the horses, oxen or beasts of any person offending against the said statutes, which diists may be made by any person whatsoever, (without any warrant, as it is deemed from 9 Ann. c. 18.) And the beasts so diisted are to be delivered forthwith to the surveyor of the highways, or other parish officer, from the plae 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, if the said officer or his officers shall be bound thereby to the said justice, who is to distribute the said diists 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 diists, 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 so diisted to the surveyor, or other parish officer as aforesaid, he shall forfeit to the said justice of the peace, of the said penalty of the party so diisted, by warrant of one justice of the peace, 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 so offending shall forfeit five pounds, to be levied, and diisted as in like manner as the forfeitures before mentioned are directed and appointed. Stat. 5 Geo. 1. cap. 12. § 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. 20.) or ofable objections. Why is not the person who feized, and is to be made the benefit of the said basis, and the reason of excluding informers where there is a penalty? Making proof must mean legal proof. The other also is not natural justice. There are exceptions in the act as to one horse, or one piece of timber, so drawn by ever so many horses; and ought not the owner to have an opportunity of proving it? The rule was dischargd with cofis. Stran. 1181. Hill, 16 Geo. 2. Rex v. Ser-
...
the offender shall be apprehended; and if there be no
other officer, then to some other officer for the use of the
poor as aforesaid.
And by sec. 9, 10, of the 4th statute, if the driver of
any wagon, cart, car, dray, or other carriage, on any
publick highway, shall ride upon any such carriage, not
having some other person lawfully entitled to ride upon
such carriage as are drawn by one horse only, or by
two horses abreast, and be 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, interface the
free passage to any other carriage, or he shall remove the
said highways; or if the driver of any empty or
unloaded wagon, cart or other carriage, shall refuse
or neglect to turn aside, and make way for any coach,
chaise, chariot, loaded wagon, cart, or other loaded
 carriage, he shall, on conviction by confession, or oath
of one witness, before one justice, forfeit any sum not
exceeding £20, by dint of, for want of sufficient diligence,
to be committed to the house of correction, or some other
prison 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
justice shall certify the said prisoner, by the sub-
sector, to the sheriff of the county where the
offence shall be committed, to be committed, or
shall 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 summoned, he shall be committed for trial to some
constable or other peace officer, and shall be conveyed
or convicted to the common bail 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 that
place.
Sect. 12. If any person shall be convicted of any
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. 13. 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
highways are to be proceeded against; and how such persons may
defend themselves.

It is enabled by the above-mentioned statute, 2 & 3
Ph. & Mar. cap. 8, sec. 2, "That the sum of every
lump may be ascertained by the oath of the
shippers of all offences which shall be committed within the
limits of every of the said highways, and to afford such fines
and assessments for the same, as shall be thought meet
by the said justices and any person whom they shall
appoint in the said premises for that purpose; and that the
amount shall be paid to the constable and churchwardens of
such places, and that all arrears that shall be
made, the same to be yearly delivered within six weeks
after the last court of Michaelmas: And the clerk of
the peace shall make the like oath indented of the fines,
for the defaults preferred before the justices of the
peace, and any such oath shall be sufficient warrant
for the said bailiff or chief constable, to levy the said
fines, &c. by way of different; And if two sufficient
diffs are not given as directed above, or if the said offender shall otherwise 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-
cers, he shall forfeit double the sum that he should before
had paid, and be liable for
And it is further enacted by the said statute, sect. 3.
That every of the said bailiffs and head constables, shall
be at least once every year, before the first day of March
and the last day of April, make a true account and pay-
gent of all such sums of money (to the constable and churchwardens of every parish where the offences were
committed, or two of them,) as shall be collected upon
any of the said offenders on pain of, to forfeit for every
time he shall not do, forty shillings.

And it is further enacted by the said statute, sect. 4.
That all fines, &c. which shall be due for any offence
against the provisions thereof 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 accountable to before the jus-
tices of peace, or two of them, whereof one to be
appointed for the purpose, shall furnish information or otherwise; The which justices shall have authority to
commit the said constable and head constable to
prison till he shall pay all such arrears as shall be
adjudged by the said justices; and every of the said
bailiffs and head constables upon their accounts shall have
power and authority to apprehend and collect and pay, eight-
gence for his own pains, and trouble, and to escape for the fees
of the clerk of the peace, or steward of the, where
the effect intended of every several parish that they
shall deliver as is aforesaid; and the successors of every
churchwarden shall have the like action of account against
their predecessors, as is before appointed against the
bailiff.

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 offence 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 to whom any such offence
shall be so preferred, shall certify the same to the next
general county session; on pain to forfeit, for not
certifying of such. Such presentments of every such
offence, five pounds; and that the justices of peace of
every county where the said offences shall be committed,
may inquire thereof at their quarter-sessions, and affix
such fines for the same, as they or two of them, whereof
one to be of the seigneur, shall think meet.

And it is further enabled by the said statute, par. 9.
That every justice of peace may of his own proper
knowledge, in the open general sessions, 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
the said statute of 5 El. c. 13. present every such offence
in such 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 to whom any such offence
shall be so preferred, shall certify the same to the next
general county session; on pain to forfeit, for not
certifying of such such presentment of every such
offence, five pounds; and that the justices of peace of
every county where the said offences shall be committed,
may inquire thereof at their quarter-sessions, and affix
such fines for the same, as they or two of them, whereof
one to be of the seigneur, shall think meet.

And that for every such default as preferred, as is aforesaid,
the justices of peace of the said county shall have
authority to affix such fines, as to them, or two of them, whereof
the one to be of the seigneur, shall be thought meet: Saving to
every person that shall be touched by any such present-
ment his lawful traverse to the fame presentment, as he
might have under the common law; and the cause of
forfeiture entry by the laws of this realm before the making of this
statute.

It hath been held 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 obligation to do it. 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 gives to every person, who shall be touched by any such pretenement, his lawful traverse to the same, as he might have to an indictment of trespasses or other things, it follows, if he is touched, that every 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 of peace setting by force of any statute as a judge, be not traversable; yet it seems hard by such a generality as to make any person 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 pretenement in a court hlet is not traversable, unless it touch the party's freethed; but I do not see why such a pretenement in pursuance of this statute should have the like privilege, since the statute hath no mention of such pretenements in courts-leet, but gives the like traverse as is allowed by law upon any indictment of trespass, &c. 1 Hawk. P. C. 217.

It is farther enacted by the said statute of 5 El. c. 13. sect. 10. That all such fines, &c. as shall be suffered by the said pretenements, shall be elided and levied in due manner, and imposed to such uses and intents, as in the said statute of 2 & 3 P& H. are appointed.

And it is farther enacted by the said statute of 18 El. c. 10. sect. 8. That all justices of alms, justices of outer and inner, and justices of the peace in their sittings, and towards oaths, in their leets, shall hear and determine every offence, matter and causes, that shall grow, come, or arise, by reason of the said statute.

Alfo it is enacted by the said statute of 22 Car. 2. c. 12. sect. 9. That if any person shall fail in his respective day's labour in every year towards the repairing of the highways, or neglect to lend his respective carriages, &c. required of him, the forejours enated to move to the next justices of the peace, who shall, upon proof by oath of one credible witnes, by leave of dirstres and sale of goods, &c. for every day-labourer failing as aforesaid, one shilling and sixpence; and for every man and house 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 highways.

And it is further enacted by the same statute, sect. 10. and 3 & 4 Will & Mar. c. 12. That the allotments to be made of the several of these statutes for the repairs of the highways, shall be levied by dirstres and sale of the goods of every person so afflicted, 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 defects 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 pretenement or indictment shall be removed by certiorari, or otherwise, out of the said county, till such indictment or pretenement be traversed, and judgement thereupon given.

And it is farther enacted by the said statute of 3 & 4 W. & M. c. 12. That all matters concerning highways, causes, 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 pretenement, indictment or diversity, 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 manifefly excepted to them, as to make an order on forreators on the highways to make up their accounts, before 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 intermediate originally with such accounts, but only by way of appeal. 1 Hawk. 215.

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. Eddon, 12 Geo. 1. Strange 894. Mich. 3 Geo. 2. Rex v. citizens of Enkawshe.

An order was made on the 7 & 8 Will. 3. c. 29. for the parish at large to repair the highways, the 6d. in the pound levied on the inholders not being sufficient. And a certiorari being moved for, it was objected 3 & 4 W. & M. cap. 12. had taken it away; to which it was answered, that the objection was held to be without a final law.

Sec per certiorari. They must both be taken together; the latter rate must be made in aid of the inholders, by virtue of the former law. So a certiorari was denied. Strange 9444. Alien. 6 Geo. 2. Rex v. inhabitants of Eskiwall.

Upon motion to quash a certiorari to remove an indictment against the defendants at seffions, for not repairing a bridge: it was infibled, 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 person or parish is charged, and the right of the public is in question, the act of 3 & 4 W. & M. cap. 11. had allowed a certiorari to be removed by certiorari, and therefore the court refused to quash. Stran. 920. Easf. 4 Geo. 2. Rex v. inhabitants of Hamworth.

It is enacted by the said statute of 3 & 4 W. & M. 12. That no person shall be punished for any offence against the said act, unless such offender be prosecuted for the same within five months after the offence committed, and that no person who shall be punished for any offence, by virtue of the said act, shall be punished for the same 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 W. & M. cap. 10. That the defendant is not bound to answer to the indictment, or to his demurrer; and therefore he has the power to traverse the matter alleged against him, which is true in deed, that it is generally holden, that no traverse can be taken against a pretenement by a judicje of peace of his own knowledge, as to the want of repair; yet this opinion seems fully quashable. 1 Hawk. P. C. 219.

However it is certain, that in all other cases whatever is indited or pretenmented, 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 pretenement; but it seemeth to be agreed, that he who is prefentenced for such an offence in a court-leet, can only traverse it, if it concerns his freedom, by charging it to be beyond 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 that after conviction, or upon a demurrer or confeffion, any one may take exceptions to such an indictment or an order, for want of a court; but the court in di ception will very rarely suffer a man to take such exceptions, before such conviction or confeffion, 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 be a case of right, or, confes of an indictment or pretenement of this kind, I shall lay down, says Mr. ferjeant Hawes, the following rules concerning them.
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... Thit, that it is fale in every fuch indictment to fhew both the place from which, and the place to which the way fuppofed to be out of repair did lead, yet except for want of fuch certainty, have fometimes been delivered guilty for fuch an indictment, fuppofing a way at D. leading from D. to C. is not good; for it is impossible that a way leading from D. fhould be in D. or no other place is alleged. 1 Haw. P. C. 219.

2dly, That it is neceflary in every fuch indictment to fhew in what place the nuisance complained of did exift, which cannot be inferred by flying a way at D. leading from D. to C. is not good; for it is impossible that a way leading from D. fhould be in D. or no other place is alleged. 1 Haw. P. C. 219.

3dly, That every fuch indictment ought alfo certainly to fhew to what part of the way the nuisance did ex- dent, as fhewing how many feet in length, and how many feet in breadth it contained, or otherwife the de- fendant will neither know of the certainty of the charge, againft which he is to make his defence, neither will the court be able from the record to judge of the greatneef of the offence, in order to affift a fane answerable thereunto; time neceffary, without adding adjoined, that an in- dictment for ftopping a certain part of the King's high- way at K. is naught, for the uncertainty thereof. Also it hath been reafoned, that the place wherein fuch a nu- fance is alleged, is not fufficiently afcertained in fuch an indictment, by fhewing that it contained fo many feet in length, and fo many in breadth, by elimination. 1 Haw. 319, 220.

4thly, That every fuch indictment muft fhew, that the way wherein a nuisance is alleged, is a common highway; for which caufe it hath been reafoned, That an in- dictment for a nuisance on a highway, without adding adjoined, that an in- dictment for ftopping a certain part of the King's high- way at K. is naught, for the uncertainty thereof. Also it hath been reafoned, that the place wherein fuch a nu- fance is alleged, is not fufficiently afcertained in fuch an indictment, by fhewing that it contained fo many feet in length, and fo many in breadth, by elimination. 1 Haw. 319, 220.

5thly, That it is not safe in an indictment againft a common perfon for not repairing a highway, which he ought to have done in refpeét of the tenure of certain lands, barely to fay that he was bound to repair it re- afe, without adjoined, that an in- dictment for ftopping a certain part of the King's high- way at K. is naught, for the uncertainty thereof. Also it hath been reafoned, that the place wherein fuch a nu- fance is alleged, is not fufficiently afcertained in fuch an indictment, by fhewing that it contained fo many feet in length, and fo many in breadth, by elimination. 1 Haw. 319, 220.

6thly, That it is not safe in an indictment againft a common perfon for not repairing a highway, which he ought to have done in refpeét of the tenure of certain lands, barely to fay that he was bound to repair it re- afe, without adjoined, that an in- dictment for ftopping a certain part of the King's high- way at K. is naught, for the uncertainty thereof. Also it hath been reafoned, that the place wherein fuch a nu- fance is alleged, is not fufficiently afcertained in fuch an indictment, by fhewing that it contained fo many feet in length, and fo many in breadth, by elimination. 1 Haw. 319, 220.

But it hath been reafoned, That an indictment againft a man for ftopping a highway in his own land, is good, without laying the offence done to & armi. Also it is faid, That a prefentment that a way is obstructed, in fact a place is decayed by the default of the inhabitants of fuch a town, is good, without naming any perfon in certainty. But it hath been adjudged, that an indictment againft particular perfons must fpecially charge them every one; for which it is faid it hath been reafoned, that an in- dictment againft general for not repairing any public ways, that they, & cures temporis, did not reafon them, is not good. 1 Haw. P. C. 220.

By that 1 Geo. 1. ft. 2. c. 52. fett. 12. Perfons ag- nified by any thing done on that act (except thofe who fhall neglect to pour their ditches, and carry away the earth taken out of the ditches, or carry away the fit, timber, flaw or dung left in the highways, or thofe who fhall not remove any other annoyance by water.-

Vil. II. No. 59.


Stat. 5 Geo. 2. cap. 29. sect. 1. If any perfon fhall wil- fully and malicioufly throw down or defroy any turnpike- gate, or any poft, rail, or other fuch thing belonging to any turnpike-gate, erected to prevent pilfering without paying the toll direcd by any act of parliament made or to be made, and fhall be convicted before his Majesty's juftices of affile, overt and terminer and general good-delivery; every perfon fo offending fhall be adjudged guilty of fe- lony; and the court before whom such perfon fhall be tried, fhall have power to transport fuch felon for seven years.

Stat. 2. If any offender fhall return into Great Britain or Ireland before the expiration of seven years, he fhall suffer death without the benefit of clergy.

Stat. 3. The commiffioners impowered to put in exe- cution any act of parliament for repairing the highways, or making rivers navigable, may out of the tolls difcharge the defts of any action or proceedings, which fhall be commenced upon the account of the pulling down and de- ftroying any turnpike-gate, poft, rail, or other fence, be- longing to any turnpike-gate, or any turnpike house, or any lock, flace, or other works, or any navigable river erected by authority of any act of parliament.

Stat. 4. If the commiffioners, appointed to put in any act of parliament for repairing the highways in execution, fhall exceed their power by erecting any new gates, where they have not power to erect fuch gates, it fhall be lawful for juftices of peace in quarter-feffions, upon complaint, in a summary way to hear and deter- mine the fame, and to order the fheriff to remove fuch gates.

Stat. 5. This act fhall continue for five years from the 24th of June 1732. [Further continued by sever- al acts, and made perpetual by 27 Geo. 2. cap. 16.]

Stat. 8 Geo. 2. c. 20. ft. 1. If any perfon fhall wilfully and malicioufly draw up any navigable gate, erected by authority of parliament upon any navigable river; every perfon fo offending being convicted upon the oath of one witnefs before two juftices of the peace for the county or place, or of the adjacent county, fhall be fell to the house of correction and kept to hard labour for one month.

Stat. 3. Every offender afofaid may be determined in any adjacent county in England.

Stat. 4. No attainer for any of the offences made fe- lony by this act, fhall work corruption of blood, loss of dower, or forfeiture of lands and goods.

Stat. 5. If any perfon fhall commit any of the offences declared to be felony by this act; and being out of prifon fhall discover and cause to be apprehended certain perfon, who fhall commit any fuch offence, fo as they be con- vinced; every fuch perfon, on conviction of the offenders, fhall have his Majesty's pardon for the felonies aforefaid.

Stat. 6. The inhabitants of every hundred in England, within which any highway is injured, fhall make satisfaction for the damages, and the fiad damages, which 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 received or who be to the use of the truftees or proprietors of any turnpike or navigable river; (the fame to be re- 

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coaru, may appeal to the next felions, whose order shall conclude and bind all parties.
needing for any offence twenty pounds) and the inhabitants of such hundred shall be taxed for the relief of such inhabitants against whom execution shall be had, in such manner, as is prescribed in an act of the 27 Geo. cap. 12.

Sect. 7. Where any of the offenders shall be convicted within twelve months after such offence, any hundred, who shall make such satisfaction, shall be paid out of the tolls of the turnpike so pulled down.

Sect. 8. If any clerk of the peace shall commence such action, and shall die or be removed before recovery, no such action shall, by such disclaimer or death, be suspended; but it shall be lawful for the clerk of the peace next succeeding, to prosecute such action.

Sect. 9. No action shall be prosecuted to recover damages by virtue of this act, unless information upon oath be made within six days before some justice of peace, whereof the defendant shall be committed, inhabiting within the hundred, or near the same.

Sect. 10. No such action shall be prosecuted to recover damages against a hundred, except such action be commenced within six months after such offence.

Sect. 11. If any person shall affidavit any collectors of the tolls to have been in the execution of their office, or shall forcibly pass through any turnpike-gate or fence, without paying the toll, or if any person shall carry away forcibly or detain any collectors of the toll, so as they shall not be able to return to their duty for three days; in any of the said cases, the party offending, upon conviction before the quarter-sessions of the county, shall forfeit five pounds; one moiety to the informer, and the other moiety to the confable of the parish where such offence shall be committed, to the use of the truants or undertakers of any turnpike or navigable river, to be levied by warrant of the justices by divers of the said infidels, the party offending shall by warrant of such justices be sent to the common gaol of the county for six months; and if such party still offend a second or third time, he shall forfeit ten pounds in manner aforesaid; and for want of divers, shall be sent by two justices to the common gaol for one year, and shall also give security at the quarter-seances for his behaviour for seven years.

Sect. 12. It shall be lawful for such collectors of the toll to seize any person guilty of the offences before mentioned, and such person to carry before a justice of peace, and such justice is authorized to oblige such person to give security, or pay the said sums for the use of the county, the common gaol, or any ract where such offence shall be committed, and for want of security to commit the person to the common gaol till give security.

Sect. 13. If any confable refuse to execute any warrant under the hands and seals of a sufficient number of commissioners of the turnpike to be money for any default, or shall refuse to execute any warrant under the hands of two justices for apprehending any person that shall be guilty of any offence against this act; or if any other person shall refuse to assist such confable in apprehending such offenders; such confable or any other person shall forfeit five pounds to the clerk of the commissioners or undertakers of any turnpike or navigable river, for the uses as the tolls shall be directed to be applied to; to be levied by divers by warrant of two justices to be directed to the high confable, to be by him levied as before directed.

Sect. 14. All forfeitures by this act shall be paid over to any person, to whom the commissioners or undertakers, or any five of them, shall direct; and in case such confable or clerk shall refuse to account for or pay over the same, it shall be lawful for any two justices, upon oath of one witness, to commit the party relating to the common gaol, until he shall pay the same, as before directed.

Sect. 15. It shall be lawful for any person aggrieved to appeal to the next quarter-seances, giving reasonable notice, which notice shall be determined by the quarter-seances; and if it shall appear that reasonable notice was not given, they shall adjourn the appeal to the next quarter-seances, and the quarter-seances shall bear the matter, and award costs to either party.
the highways." This seems to be descriptive only of such offences as are the objects of turnpike acts, such as Polluting without paying the toll, taking off horse-drawn cart and the like; but the words do no means include the offence of failing or neglecting to do the flat rate 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 surveyor of the highways can never have been within the meaning of this clause, because by the 23 Geo. 2, and 1 Geo. 3, he is bound to inform:—The words are, "he shall give an account there of," and it is a misnomer in him to omit it. If the clause in q. 6 should extend to the highways in general, the consequent provisoes are made, but by an affliment 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.

Sat. 26 Geo. 2. c. 32. [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 turnpike roads already established, and being pollution and dill and in and upon the publick highways and turnpike roads of this kingdom, and the excessive weights and burdens loaded and carried in and upon the same, and the small breadth and narrow dimensions of the felie of the wheels of such waggons and carriages respectively, great part of the said highways and ways roads are become rough, and almost impassable; and unless a speedy remedy be had in the premistis, all the provisions made by law for the high- ways and roads, and for maintaining and keeping the same in repair, will in great measure be rendered in vain; and whereas there is a great prejudice and difficulty of the said streets, the 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 horses or beasts of draught of such waggons, carriage, or being the flail or stall horse, together with all gear, bridles, halters and accoutrements, to such horse or beast of draught respectively belonging, to the sole use and benefit of the person or persons who shall flail or disfrain the same.

Sat. 7. and whereas in and by several acts of parliament made and passed for amending and regulating particular highways and roads within the kingdom, several high and extraordinary tolls and duties are or are directed to be levied and paid for waggons and other carriage, drawn by more than a certain number of horses or beasts of draught therein respectively mentioned, with an intent in effect to prohibit the passage of such waggons and thereby the better to preserve the said roads: it shall and may be lawful to and for the trustees appointed or to be appointed, in or by virtue of any act of parliament now in force, or now depending in parliament respectively, for repairing and mending such particular highways and roads as aforesaid, or any part of such carriage, or beasts of draught, for the better supply of the said districts; and they are hereby authorized and required to mitigate, lessen and reduce the said high and extraordinary tolls and duties, for in respect of such waggons or other carriage, having wheels of the breadth or gauge herein before preferred, in futh
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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 being given, or if they or any of them shall not so give notice, or if they shall not procure the said appeal, shall and may at such differences mitigate the penalties or forfeitures incurred by the party complaining, or vacate or set aside the said conviction or convictions, or set the party or parties at liberty, or if the officers or the said trustees, or any or either of them, were guilty 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 trustees respectively, and is hereby for ever after rendered incapable of holding any office whatsoever under the said trust.

and this act shall be openly read in the presence of the said trustees or any of them that shall commit the said offence, for the being of them.

And if any such officer shall be found to have been guilty 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 trustees respectively, and is hereby for ever after rendered incapable of holding any office whatsover under the said trust.

And to person or persons who shall keep any uncleasing-house, ale-house, or other house of public entertainment, or who shall sell any wine, cider, beer, ale, spirituous or other strong liquors by retail, shall be capable of taking, holding or enjoying, for the places of trust or profit under the trustees of any act of parliament made or to be made for erecting turnpike-roads, respectively, or of farming the tolls thereby granted and made payable, during such time as he shall keep such uncleasing-house, ale-house, or other house of public entertainment, or shall sell any wine, cider, beer, ale, spirituous or other strong liquors by retail.

And in case any action or prosecution shall be commenced and prosecuted in pursuance of this act, under the authority of the said trustees, or any of them, or of any of the said trustees, or any five of them; in every such case, the trial of such turnpike-roads respectively, or any five or more of them, all out of the profits arising by the tolls of such turnpike roads, allow and pay to the prosecutor for so much as the costs allowed by this act shall be a full and entire reimbursement of him just and reasonable expenses.

Provided, that nothing in this act shall be construed to oblige the said trustees to commence or prosecute, or to be commenced or prosecuted, any action or proceeding for any such offences, unless under the condition of the said act that one or more witnesses or witnesses can be had and produced, to prove the commission of such offence.

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 said 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 said 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 commenced or prosecuted is or are or any of them are, 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 this act or of the authority of this present act; and if the said act shall appear to have been done, or by any such action or suit shall be brought after the time herein before limited for bringing the same, or be brought or laid 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 non-suited, or did continue his, her or their actions, after 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 both or have in any other cases by law.

The trustees 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 respectively, shall be incapable, as to the time to time, as there shall occasion, of all the turnpike roads within their respective districts to be levied, and put in good condition in such manner as shall be most commodious for the use of travellers, and for the several forts of carriages passing upon the same.

And if any person or persons shall unload, or cause to be unloaded any goods, wares or merchandise, from any cart, wagon or other carriage, at or before

Vol. II. No. 89.
any forfeiture or penalty inflicted as aforesaid, to examine into the real merits of such prior forfeiture, action, information, proceeding or conviction; and if thereupon it shall appear that the same was not done, made or professed effectually, to recover and apply the penalty or forfeiture, shall pass to and be in every way made good to and for the use of the state, or the use of any one or more of the judges or jurors, or of the year, or for the use of the said justice or justices, or of the revenue shall be committed, upon the oath of one or more of the said justice or justices, rendering the overplus to the owner (if any be) on demand, after deducting the reasonable charges of making such dittrefs and sale, to be settled by such justice or justices, three or more of them, or by the said justice or justices; and each and every driver of such waggon or carriage, so offending and being thereof convicted as aforesaid, shall be committed to the house of correction for the space of one month; and in case any collector or receiver of the tolls or duties at any gate or turnpike, or where near to which any such carriage or engine, or the weighing of cargoes shall be built or erected, shall permit or suffer any cart, waggon or carriage aforesaid, not having the fellies of their wheels of the breadth or gage of nine inches from side to side, to pass or repass through any such gate or turnpike without the wheels or the breadth, and being thereof convicted in manner as aforesaid, such collector or receiver 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 fellies of their wheels of the breadth or gage of nine inches from side to side, may travel, pass or be drawn upon any turnpike road, provided every such waggon, win or other four-wheel carriage, be not drawn by more than fix oxen in pairs and two horses, or eight oxen in pairs and one horse; and that any cart or other two-wheel carriage, having the fellies of their wheels of the breadth or gage aforesaid, may travel, pass, or be drawn upon such turnpike road, provided such cart or two-wheel carriage be not drawn by more than six oxen or neat cattle in pairs and one horse, or four oxen in pairs and two horses.

Sect. 10. In all such places where by virtue of any aë or acts of parliament now in force, the toll or duty on horses or other beasts drawing or pulling thro' any turnpike bar or gate, doth not amount to more than the sum of one halfpenny for every horse drawing any wheel-carriage whatever, or not having the fellies of their wheels of the breadth or gage of nine inches from side to side, or more than one penny for two horses drawing any such carriages as aforesaid, or to more than three halfpence for three horses drawing any such carriages as aforesaid, the trustees or any five or more of them appointed by virtue or under the authority of such aës or acts of parliament, shall and may, if they shall find the same necessary, upon considering the state of their respective tolls, collect double the former tolls or duties, in case such tolls or duties do not exceed one halfpenny, and three halfpence in case the same duty in case the same duty in the present toll or duty amounts to two pence or more upon the horses drawing any carriage, in such and the same manner as if such toll or duty was laid upon the carriage.

And no suit or action at law may be lawful for all courts, and all and every justice or justices of the peace, before whom there shall be any action, information or proceeding, for any penalty or forfeiture inflicted by any aë or acts of parliament made or to be made for repairing and amending turnpike-roads, or any way relating to or concerning the said turnpike-roads, or any riding, division or place, where the same shall be committed, upon the oath of one or more of the said justice or justices, rendering the overplus to the owner (if any be) on demand, after deducting the reasonable charges of making such dittrefs and sale, to be settled by such justice or justices, three or more of them, or by the said justice or justices; and each and every driver of such waggon or carriage, so offending and being thereof convicted as aforesaid, shall be committed to the house of correction, to be there kept to hard labour for the space of one month.
laws have been made for and relating to turnpike-roads since 24 Geo. 2, and more acts of the same kind are likely to be made for it enacted, Let every pro-
ducer or informer may at his election sue for and recover any forfeiture or penalty, imposed by this any act or acts of parliament made or to be made for erecting turn-
pikes for repairing and amending turnpike-roads, or by any other act or acts of parliament, in the same manner as such forfeitures and penal-
ties are respectively and severally directed to be fixed 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 it is,
forfeiture of any such horse, shall be lawful to sue for and recover the same, but shall be likewise liable to such
forfeiture, as in the value of which any such horse, beaft of draught, and other goods, as is or are liable
forfeited, shall be given in damages without any proof of any seizure or demand.
Sect. 17. And every surveyor of any turnpike-road, and every toll-gatherer, and all such forfeitures employed by commissioners and trussers appointed for the repairing roads, as receive salaries or rewards, who shall wilfully neglect to levy any supernumerary horse or horses drawing
in any wagon, wann or cart, contrary to the true in-
tent and meaning of this and the said recited act, 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 the proper commissioners or trustors of the public
respective meetings, as by the said recited act 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 remain-
ing the roads in such manner as the commissioners and trussers for such
respective turnpikes shall think fit.
Sect. 30 Geo. 3. c. 28. This act was to continue only for seven years from the 24th of June 1753; it is therefore expired in the 24th of June 1759: But part of it is con-
tinued for the further term of seven years by the following act passed last session.
Sect. 5 Geo. 3. c. 38. (Initiated, An act to continue part of an act made in the thirteenth year of the reign of his late Majesty King George the Second, intituled, An act to render more effectual the federal laws now in being, for the amendment and preservation of the public highways and turnpike-roads of this kingdom; and for making further provisions for the preservation of the said roads.)
Sect. 1. Whereas by an act made in the thirteenth year of the reign of his late Majesty King George the Second, intituled, An act to render more effectual the federal laws now in being, for the amendment and preservation of the public 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 eighty six, the trussers ap-
pointed or to be appointed, by virtue or under the autho-
ritv of any act of parliament made or to be made, for making, repairing or amending turnpike-roads, or such
person or persons as arc or shall be authorized by them, shall and may, and they are hereby required to,
and take for every waggon, wann, cart or carriage, hav-
ving the felles of the wheels thereof of less breadth or
gage than nine inches from side to side, at the height, at the bottom or side thereof, or for the horses or beafts of draught drawing the same, one half more than the tolls or duties which they shall be lawful to take therefor, and for every other act or acts of parliament made or to be made for making, amending or repairing turnpike-
roads, except carts or carriages drawn by one horse or two oxen, or by two horses or four oxen, having the felles of the wheels thereof of less breadth or gage than four inches at the bottom from side to side: And it is by the said act recited, That there are in several acts of parliament made for amending and repairing turnpike-
roads, exemptions allowed from payment of tolls in par-
ticular cases in the said acts respectively mentioned, and where is alluded in particular cases to pay lesser tolls than are charged upon other waggons, carts or carriages, pay-
ing 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 ad-
vantages, to carriages with wheels of the breadth or gage of nine inches, and therefore enacted, That where any time aforesaid, no perfon shall, by virtue of any of the said acts 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 waggon, wann, cart or other carriage, or any horse or draught tolls or in other carriages of the like nature as shall be made; and that nature of tolls to be payed, unless such waggon, wann, cart or carriage, have felles of the wheels thereof of the breadth or gage of nine inches, except as before excepted: And it is thereby also enacted, That, during the time aforesaid, it shall not be lawful
for any waggon, wann or carriage, having the felles of the wheels thereof of the breadth or gage of nine inches as aforesaid, to pass upon any turnpike-road, or through any turnpike-
gate or bar, unless the same be drawn by horse or horses of draught, in pairs; provided, that where there is an odd horse or beaft of draught, belonging to such waggon wann or carriage, it shall be lawful for the same horse or beafts of draught, to draw such waggon or wann, together with the other horses or beafts of draught, drawing in pairs; and provided, that such horses, or beafts of draught, do not in the whole exceed the number of horses, or beafts of draught, allowed by law; and that it should not be lawful for any wann or carriage, 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 beafts of draught, in pairs, and not by oxen: And it is hereby enacted, That in every such case, when it shall be lawful for the same carriage or waggon to be driven on any turnpike-road, any common stage-wag-
gon thereby prohibited, shall be punished for the same by inditement or information, and shall, at the election of the protector or informer, for every such effence, be subject and liable to the like penalties and forfeitures as the owners of waggons and carriages, having the felles of the wheels of lefs breadth or gage than nine inches from side to side, are made subject and liable to, by an act made in the twenty-fifth year of the reign of his late Majesty King George the Second, intituled, An act for the amendment and preservation of the public highways and turnpike-roads of this kingdom, and for making 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 thereby directed; and that no such imposition shall be made for or in respect of any wann, cart or carriage, the felles of the wheels thereof of less breadth or gage than nine inches, as is herein before recited shall be further imposed: Be it therefore enacted, That so much of the said act as is herein before recited, shall (except only where the same is hereby altered or varied) be further continue

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Sect. 2. Provided always, That nothing herein contained shall extend, or be construed to extend, to continue a charter of any turnpike-road; and that, notwithstanding the con-
tinuance of the said act, the trustees appointed or to be ap-
pointed by virtue or under any authority of the act of par-
liament made or to be made for making, repairing or
amending turnpike-roads, and such person and persons as
shall be authorised by them, shall and may, and they are hereby required and directed to repair all

wagons, vans, carts and carriages, having the felles of the wheel

tire 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 turnpikegate or gates, bar or bars, within one hundred miles from London, or
on pavements for such toll or duty as shall not exceed one half of the full or duties payable for such

wagons, vans, carts and carriages respectively, or for the

hoes, or beafts 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 charters as to this respect are to be void:
and it is hereby enacted and directed, that after and from the said twenty-fourth day of June one thousand seven hundred and sixty-five

can determine; except he wheels of such wagons as shall be fixed thereon, in the manner heretofore
determined and directed,

Sect. 3. And it is further enacted, That from

and after the said twenty-fourth day of June, the trustees

appointed or to be appointed by any act of parliament,
paid or to be paid for the making, repairing or

amending any turnpike-road, or any person authorised and

appointed by them, shall, during the time aforesaid, permit
and suffer any wagons and vans, having the whereof from

wheels of such wagons and vans shall roll a footpace of

at least sixteen inches wide, on each side of the said wag-


ons or vans; and having the felles of the wheels of the

broad of the breadth of nine inches from side to side, at the

bottom or sole thereof; to pass through any turn-
pike-roads, and such person and persons as shall be

authorised by them, shall and may, and they are hereby

required and directed to repair, and to prevent any

injury done to the felles of the wheels of such wagons and vans,

by any alteration or changes thereof, which shall be

made or suffered, or that any person shall enter on or

perform any thing in or to the said wagons, vans, carts

and carriages, the felles of the wheels of which shall

be less than six inches wide, on either side of the middle of such road, any post or posts, heap or heaps of flints, or

use of the surface of the said road, by which the

passing thereof shall or may be obstructed, impeded, con-

fined or detained; such surveyor or other person shall

forfeit one half of the fine stated and declared to exist

in or upon the surface of the said road, to be recovered before one justice of the peace,

whether such justice be or be not a trustee of such road;
and shall be levied by distress and sale of the goods and chattels of such person or persons, by warrant under the

hand and seal of such justice, which warrant such justice

is hereby directed to sign, and to deliver to the person or persons to whom distress is

claimed shall think him, her or themselves, aggrieved by the
determination of such justice, he, the or they may appeal to
the general quarter-fellows of the peace, who shall

finally determine the matter, and allow such college

not exceeding forty shillings to either party, as such

fellow shall think fit; in which case no certiorari shall lie or be brought.

Sect. 4. And whereas the trustees appointed or to be

appointed by any act or acts of parliament made or to be

made for making, repairing or amending any particular

highways or roads, may have neglected, or may hereafter neglect, to meet on the day appointed, or to be

appointed by any act or acts respectively for their first meeting; or to meet on any day appointed by

such trustees, or for any other purpose by

adjournment for their meeting, or for want of a proper ad-
journment; by which means, or some or one of them, the

intent of the said act or acts may be frustrated; Be it there-

fore enacted by the authority aforesaid, That in all or either

of the said cases, it shall be lawful for any two or more of

the trustees, appointed or to be appointed by any act or acts respectively, or their clerk or clerks, to caufe notice
in writing to be affixed on all the turnpikes that shall be

then erected on the said respective roads, or, if no turn-
pikes shall be then erected, to caufe the like notice to be

affixed in the most conspicuous place, in one of the

principal towns or places nearest to such road, having the felles of

said to be repaired or lie, at least ten days before the in-

tended meeting, appointing such trustees to meet at such

place where the preceding meeting was appointed to have

been held, or at the place directed for the first meeting

of such trustees, if no preceding meeting shall have

been held; and the said trustees when met, shall have

power of such notice, shall and may, and they are hereby required

to proceed to carry such act or acts into execution in the

fame, and at full and ample a manner, to all intents and

purposes, as they might or could have done if no such

neglect had happened.

Sect. 5. And whereas by an act of parliament made

in the 26th year of the reign of his late Majesty George the

Second, intitled, An act for the amendment and pre-

ervation of the publick highways and turnpike-roads of this

kingdom, and for the more effectual execution of the laws

relating thereto, it is, amongst other things, enacted, That it

shall and may be lawful for any waggons, or other four

wheel carriages, having the felles of the wheels thereof of

the breadth or gage of nine inches, to travel, pass or be

driven, upon any turnpike-road, with any number of

horse or horses, or draught, not exceeding eight; and for

every cart or other two wheel carriage, having the felles

of the wheels thereof of the breadth or gage aforesaid,

with any number of horses or beafts of draught not exceed-

ing five, without being subject or liable to be weighed

at any one horse, or engine: And whereas great dam-

age hath been done to the turnpike-roads in many para-

cles, and to the goods and chattels of many persons,

therein, which have not been carried by such waggons and carts; Be it therefore

enacted by the authority aforesaid, That so much of the

said aforesaid act of the 26th year of his said late Majesty's,

as exempts such waggons, carts and carriages from being

weighed or impounded, or that any engine, machine or engine, shall be, and the

same is hereby required, and that it shall and may be

lawful to and for all trustees appointed, or who shall

hereafter be appointed, by any act or acts of parliament

for the repair of any highway or highways within that

part of Great Britain called England, or for any of five

of them, at any or any part of any gate or gates, bar or bars, which they have erected or shall ere for the receiving of

toll, or tolls, or at any other convenient place upon the

said roads, during the time aforesaid, to order or caufe to

be built or erected, if they think fit, any crane, machine,

engine or engine, which they shall judge proper for the

weighing of such goods and chattels, or that any engine, machine or engine, to be weighed or impounded, to be

liable thereto, and with the same thereof (except such waggons and wains as aforesaid, the fore and hind wheels of which shall roll a surface of at least sixteen inches wide, on each side of such waggons and wains); and for them, or any five or more of them, or for any person or persons impowered by them,
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or any five or more of them, to receive and take, over and above the costs, fees, and charges, or hereafter to be made, the sum of 20l. a hundred weight, for every hundred weight which every such waggon, together with the loading thereof, shall weigh, over and above the weight of six ton; and also the sum of 20l. a hundred weight, for every hundred weight which every such cart or other cattle as aforesaid, and more of these things as the said Magistrate or his Agent shall think fit, and shall be made, upon complaint to him or them made upon oath, (which oath such justice or justices is and are hereby authorized and required to administer) to levy the said by driffels and fale of the offender's goods and chattels, rendering the overplus to the owner on demand: And if any person or persons shall be hereby aggrieved, by the determination of such justice of the peace, he, she, or they may appeal to the general quarter-seinion of the peace, which shall finally determine the matter of such appeal, and allow such costs, not exceeding forty five shillings, to either party, as such felleion shall think fit; in which case no costs shall but be brought.

Sect. 9. And whereas the said turnpike-roads are not sufficiently improved to punish nuisances in the several roads under their care; Be it therefore further enacted by the authority aforesaid, That the said turnpike-roads, in the several roads respectively, or any five or more of them, and they are hereby required, if they shall think fit, to direct professions by indictment, or otherwise, against the offender or offenders for any nuisance done, committed or continued in, to or upon any of the turnpike-roads under their care respectively, at the expense of the revenues belonging to such turnpike-roads referred to.

Sect. 10. And be it 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 or procecuted 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 commenced, both ordinarily inhabit and reside, or in the county or riding where the fact was committed, and not afterwards. And if proceedings or suits be commenced, or such action or suit be brought in the county, riding or place, where the person, against whom such action or suit shall be commenced, both ordinarily inhabit and reside, or in the county or riding where the fact was committed, and not afterwards. And if proceedings or suits be commenced, or such action or suit, be in any county, riding or place, the same shall be brought in the county, riding or place, where the person, against whom such action or suit shall be commenced, or upon the person, or persons, or both, as the case shall require.

Highwaysmen. 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, in 4 & 5 Will. & Mar. c. 8. See Felony, Robbery, Diglets. See Game, Poachers.

A turnpike road. The words were anciently added in deeds after the in capite et terminis, and written with the same hand as the deed, which witnesses were called, the deed read, and then their names entered: And this clause of bis testatis in subjects deeds continued till the reign of Hen. 8. but now is quite left off. Co. Litt. fol. 6. 

Vinde. (John, serjeant at law) The manor of Thir- lynn, how allured to him and his heirs, 34 & 35 Hen. 8. c. 24. 

Vendulorum Hortulorum. A society of men; from the Sex. 

Hortendus, fictorius: for in the time of our Saxon ancestors many persons in every county, in three challes, the lawf, the middle, and highbys, and were valued in the same, 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 lawf were those who were worth ten pounds, or two hundred shillings, and they were called viri decemtiem, or capiendentes, their value were at five hundred shillings; the middle were valued at six hundred shillings, and were called fisbandenors, and their wives fisbandens. The highbys were valued at twelve hundred shillings, and were called rossbandens, and their wives rossbandens. Bremp. Leg. Alf. cap. 2, 35, 31, 32. See Claustrum and Ceasbandia.

Vint. (Sex.) a servant, or one of the family; but it is now taken, in a more restrictive sense, for a servant at husbandry; and the master-lord, he that overrules the rest. 

Sect. 12 R. 2. cap. 4.

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Ustall.
Yoga, Poggius, Poggius, A mount or hill. From the German, or from the Sax. bown, tech. the being changed into n. Education und quendam edictum & hujam pettorum, & ulti ad ecipient quendam vatum quam recent Stammghaum, hujus Stammhau, &c. mentem lapidumm. Du freune. Couvel, edit, 1727.

Hoggatter, A little bog. In legitam Forsfler, Scape, copy, this for by Eflam, time of a certain house which is accounted of his family in whole house lies; and if he offend the King’s peace, his host must be answerable for him. Brenttan, lib. 3. tred, c. 2, c. 10. In the laws of Hogiogus, let forth by Lombard, he is called Agnes, where you may read more of this matter. Couvel, edit. 1727. See These rights of anilure.

Hoggarthes, Hoggarthes, A sleep of the second year.—Aegri primo computo poijiaui noti sunt quasi vacator seconda anns hoggati. Et conuerterunt multos cum malitias, & harzard et cum harcariis, &c. femina cum sutilis. Rega computi domus de Frendon. MS. Centum et centurionibus, filletis, multos cum malitias, matrix cum matriculari, hogiaci cum hoggatis. Catull. Abbat, Glatton. MS. fol. 48. a. and indeed in many, especially the northern parts of England, sleep after they lose the name of lambs, are called bags, as in Kent, togs. Couvel, edit. 1727.

Hoggs, Hoggs, A measure of wine, oil, &c. containing half a pipe, the fourth part of a tun, or fifty-three gallons. Stat. r. 3. e. 13. See Drabell.

Hogius, Hogius, A leg or fwire, beyond the growth of a pig.—Porelli primo computo poijiaui noti sunt vacator, sed secunda annus hogvagi. Regula computi domus de Frendon. MS.—Centum conti centurionibus, filletis, multos cum malitias, matrix cum matriculari, hogiaci cum hoggatis. Catull. Abbat, Glatton. MS. fol. 48. a. and indeed in many, especially the northern parts of England, sleep after they lose the name of lambs, are called bags, as in Kent, togs. Couvel, edit. 1727.

Hoggshead, A measure of wine, oil, &c. containing half a pipe, the fourth part of a tun, or fifty-three gallons. Stat. r. 3. e. 13. See Drabell.

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parcell of the sum, or he may recounter and hold over till he shall levie the entire sum, not accounting the time of his expulsion. But otherwise, if the expulsion was by a stranger. 4 Rep. 82. Mich. 41 & 42 Edw. Corbet's case.

There is a difference between an "eligit" and a flute-merchant; for in an "eligit" he can't hold over; but upon a flute-merchant he may, because the extender is to have his charges and expenses over and above the debt, which are not to be recovered upon the "eligit." Arg. Mich. 1560. Hard. 40. 8. cites 4 Rep. 67. b. Faulcon's case. See De Fed. Stct. 321. 341.

Holtm. (Sax.) Holme, sula annia, A river island, according to Bede; or plain grass grounded upon water-sides, or in the water, according to Camden. Cum duoibus holmis in campis di Veteris. Mon. angl. 2 par. fol. 262. b. Therefore where any place is called by that name, or where this syllable is joined with any other in the names of places, it signifies a place surrounded with water; as the Finistaltres, the Stephambros, near Driftil: But if the situation of the place is not near the water, then it may signify a hollow place; for holm in Saxons, is in English an hill or cliff. Conybeare, ed. 1727.

What holydays and what days are to be kept, 1 Ed. 1. f. 14. 14.

Fairs and markets not to be kept on Sundays and principal festivals, except four Sundays in Autumn, 27 H. 6. f. 5.

Shoemakers in London not to sell or fit or on their goods on Sundays, 4 Ed. 1. f. 7. 1 Jac. 1. f. 22. f. 29. Days to be observed as holy days, 2 & 2 Ed. b. e. 10.

4. El. f. 5. f. 14. 15. 36. 40.

What holydays and fasting-days shall be kept, 5 & 6 Ed. e. c. 3.

Penalty of not referring to church on Sundays and holy-days, 1 Ed. 2. f. 2.

Wednesday not to be a holy-day, 27 El. e. 11.

ViCtuallers prohibited to utter fiRs on fiRs-days, 27 El. e. 11.

The penalty of eating fiRs on fiRs-days diminished, 33 El. e. 7. f. 22.

Regulations of licences to eat fiRs in Lent, 1 Jac. 1. e. 20.

The fifth of November to be kept as a day of thanksgiving, 3 Jac. 1. e. 1.

The punishment of using sports on the Sundays, 1 Car. 1. e. 2.

Carriers, drovers, butchers or bakers, not to travel or expose meat on the Sundays, 3 Car. 1. e. 2. 29 Car. 2. e. 7.

The 29th of May to be an anniversary thanksgiving, 12 Car. e. 14.

The 20th of January to be kept as an anniversary day among the Covenanters, 12 Car. or c. 30.

The 2d of September to be annually kept as a fast in London, 19 Car. 2. e. 3. f. 28.

No wares to be exposed to sale on the Sundays, 29 Car. 2. e. 7.

Except viands in inns, Ut. or markets, ibid. fett. 3. or markets, 10 & 12 H. 3. e. 24. fett. 11.

Coachmen or chairmen may ply on the Lord's day, notwithstanding the 20 Car. 2. e. 7. 9 Ann. 2. c. 25. fett. 20. 21.

Perfons not to travel in boats, Ut. on the Sundays, 29 Car. 2. e. 7. fett. 22.


Hoklly. Rock fiRs may be used in it's flat work.

Honom, (Homamia, Probably derived from homus, because the tenant does this service to his lord, he.

I buy your man; it is also called marked. Co.

282
Homicide, properly so called, is either against a man's own life, (called self-murder, or _felo 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 exculpable, and causes the forfeiture of the party's goods.

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2. Of justifiable homicide.
3. Of exculpable homicide.
4. Of manslaughter.
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But here I cannot (says Mr. ferjeant Hutchinson) take notice of a strange notion, which has unaccountably prevailed of late, that every one who kills himself must be _non capas_ of course; for it is laid to be impossible that a man in his fenses should do a thing so contrary to nature and reason as to kill himself, for the command of the principle of self preservation. 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 highest aggravation of this offence, should be thought to make it impossible to be any crime at all, which cannot but be the most surprising conclusion to this position, that none but a madman can be guilty of it; may it not with so much reason be argued, that the murder of a child or 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? Which may not the passions 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.

2. Homicide.

The lawes 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 _felo 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 _felo de se_ for he is the only agent.

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1. It must be owing to some unavoidable necessity, to which the person who kills another must be reduced, without any manner of fault in himself. 1 Hawk. 69.

2. There must be no malice coloured under pretence of necessity, for wherever a person who kills another, acts in truth upon malice, and takes occasion from the apparent necessity to do it, he is guilty of murder. 1 Hawk. P. C. 60. 2 Rol. Rea. 120. 121. Kelynge 28. H. P. C. 38. Bract. lib. 3. cap. 4.

3. According to the opinion of the old books, (which in this respect seem to be contradicted by others more modern,) it seems that one rule only must be observed, viz., amounting to justifiable homicide, in a special plea to an indictment or appeal of murder; and that the fame being found true, he shall be dismissed, without being arraigned, or enforced to plead Not guilty. And indeed it seems extremely hard, that a sheriff or judge who condemn or execute a criminal, &c. should be forced on a frivolous pretension to hold up their hands at the bar for it, &c. But it is agreed, that no one can plead a fact amounting to homicide je defendanda, or by misadventure, but that in such a case the defendant must plead Not guilty, and give the special plea in evidence. And it is agreed, that where a special fact, amounting to justifiable homicide, is found by the jury, the party is to be dismissed, without being obliged to purchase any pardon, &c. 1 Hawk. 69.

Justifiable homicide is either of a public or private nature. That of a public nature is that which is occasioned by the due execution or advancement of public justice. That of a private nature is such as happens in the just defence of a man’s person, house, or goods, 1 Hawk. P. C. 70.

As to justifiable homicide in the due execution of public justice, the following rules must be observed.

1. The judgment, by virtue whereof any person is put to death, must be given by one who has jurisdiction in the cause; for otherwise both judge and officer may be guilty of felony. 1 Hawk. P. C. 70. Dall. cap. 93. 10 Cal. 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 judgces of peace on an indictment of treason, and award execution, which is executed, both the judges who gave, and the officers who executed the sentence, are guilty of felony; because these courts have no more jurisdiction over these crimes than mere private persons; and their proceedings therein are merely void, and without any foundation. 1 Hawk. P. C. 70.

But if the judgces of peace, on an indictment of trefpafs, arraign a man of felony, and condemn him, and he be executed, the judges only are guilty of felony, and not the officers who executed their sentence; for the judges had a jurisdiction over the offence, and their proceedings were irregular and erroneous only, but not void. 1 Hawk. P. C. 70. H. P. C. 35. Dall. c. 98.

2. The judgment must be executed by the lawful officer. Indeed it was formerly held, that any one might as lawfully kill a person attainted of treason or felony, as a wolf or other wild beast; and anciently a person condemned in an appeal of death, was delivered to the relations of the deceased in order to be executed by them. 1 Hawk. 70. 1 Inf. 128. b. 2 Inf. pl. 3. S. P. C. 13. a. 11 H. 4. 12. a. Plew. Com. 306. b. 3 Inf. 127.

But at this day, as it seems agreed, if the judge, who gives the sentence of death, and, a factiur, if any private person execute the fame, or if the proper officer himself do it without a lawful command, they are guilty of felony. 1 Hawk. 70. 5. 2 Inf. pl. 41. Brs. Appel. 69.

3. The execution must be pursuant to, and warranted by the judgment, otherwise it is without authority; and consequently, if a sheriff be held a man where it is no part of the sentence to cut off the head, he is guilty of felony. 1 Hawk. 70. 35 H. 6. 57. b. Bros. Appeal 5. S. P. C. 13. H. P. C. 19. 277.

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Vol. H. NO. 69.

killed is not looked upon as a fals de fe, insaith as his affent was merely void, as being against the law of God and man: But where two persons agree to die together, and one of them at the persussion 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 is more certain, that he who dies shall be adjudged a fals de fe, 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 that particular manner. 1 Hawk. P. C. 68. cites Brat. 136. Mar. 754.

As to what kind of an offender shall forfeit, it seems clear, that he shall forfeit all chattels real or personal which he hath in his own right, and also all chattel real whereof he is possessed 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, as for foy, entire chattels in possession to which he was intitled jointly with another, on any account except that of merchandise: But it is said, that he shall forfeit a moiety only of such joint chattels as may be severed, and nothing at all of what he was joint possessor of as executor or administrator. 1 Hawk. P. C. 68. it contains many authorities.

However the blood of a felf de fe is not corrupted, nor his lands of inheritance forfeited, nor his wife barred of her dower. 1 Hawk. P. C. 68. Plow. Com. 261. b. 262. a.

And as to what of the personal estate is vested in the King, before the self-murder is found by some inquisition; and consequently the forfeiture thereof is fixed by a pardon of the offence before such finding. 1 Hawk. P. C. 68. 3. Cal. 110. b. 3 Inf. 54. 1 Sound. 362. 1 Stat. 1350. 107.

And such inquisitions ought to be by the coroner (preceding paragraph) if the body can be found, and such inquisition as fone may, cannot be travelled. 1 Hawk. P. C. 68. H. P. C. 29. 3 Inf. 55.

But if the body cannot be found, so that the coroner, who has authority only over felf de fe corporis, cannot proceed, the inquiry may be by justices of peace, (who by their commission have a general power to inquire of all felonies,) or in the King’s Bench, if the felony were committed in the county where the said court sits; and such inquisitions are travelable by the executor, &c. 1 Hawk. P. C. 69. 3 Inf. 55. H. P. C. 29. 2 Lev. 142. 1 M. 6. 28. 3 M. 30. 1 Lev. 158.

And also all inquisitions of this offence being in the nature of indictments, ought particularly and certainly to fet forth the circumstances of the fact; and in the conclusion add, that the party in such manner murdered himself. 1 Hawk. 69.

Therefore it is evident, the prisoner must be insufficient, as if it be found that the party flung himself into the water, &c. felf osfumpit sese, which is nonsensical, (because ‘emergere signifies only to rise out of the water,) or if there be wanting the proper conclusion, &c. felf fuccepit moraturus, the inquisition is not good. 1 Hawk. 69. 2 Lev. 142. 2 M. 30. 1 Lev. 158.

Yet if it be in sufficient, the coroner may be for- merly with a rule to amend a defect in form. 1 Hawk. 69. 1 Sid. 225. 259. 3 M. 101. 1 Ker. 907.

By the rubric in the Common Prayer, before the burial office, (confirmed by fl. 13 & 14 Car. 2. e. 4.) persons who have lived violent hands upon themselves, shall have no charge used at their interment.

2. Of justifiable homicide.

Concerning justifiable homicide, the following rules are permitted by Mr. Serjeant Hatton.
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 piously be apprehended, or if a person, whether a felon or public officer, with or without a warrant from a magistrate, he may be lawfully slain. 1 Hawk. P. C. 70. 23 Aff. 55. Br. Cor. 82. 80. S. P. C. 13. 3 ibid. 221. Dalt. cap. 98. H. P. C. 30. Crom. 30.

If an innocent person be in the midst of 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 change against him upon record, to which at his peril he is bound to answer. 1 Hawk. 72. 47.

If a criminal, endeavouring to break the goal, affails his gader, he may be lawfully killed by him in the affair. 1 Hawk. 71.

If those who are engaged in a riot, or a forcible entry, or detraining, stand in their defence, and continue the force in opposition to a demand of their peace, &c., or reject such justice endeavouring 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 and lawfully engaged to arrest him in the public service. 1 Hawk. 71. Crom. 30. 615. H. P. C. 37. Poph. 121.

If trespallisurers in a forest, chase, park or warren, or any inclosed ground wherein deer are kept, will not render themselves to the keepers, upon hue and cry made to hand to the keepers, nor fly beyond them, or defend themselves against them, they may be slain by force of the statute de multrestialis in paris, and 4 Will. & Mar. cap. 10.


If either of the parties fighting in a combat allowed by law, for the trial of some special cases, be slain, he who kills him is justified, and the death of the other is imputed to the just judgment of God, who is presumed to give the victory to him who fights in maintenance of the truth. 1 Hawk. P. C. 71. Dalt. cap. 98. Poph. Cap. 9. 615. 3 ibid. 221. 37 H. 6. 21. a.

The advancement of public justice in civil cases may also be justified in some cases: As where a felon, &c., attempting to make a lawful arrest in a civil action, or to retake one who has been arreståte and mise his escape, is resisted by the party, and unavoidably kills him in the affair. 1 Hawk. P. C. 71. 4 Will. & Mar. cap. 10. 1 Hawk. P. C. 71. Dalt. cap. 98. 11 Will. & Mar. cap. 66. 615. Dyer 324. 128. Dalm. cap. 98.

And in such case the officer is not bound to give back, but may lend 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, or be for felony, &c., 1 Hawk. P. C. 71. 37. Neither can the sheriff himself lawfully kill those who barely flee from the execution of any civil process. 1 Hawk. P. C. 71. H. P. C. 37.

As to justifiable homicide of a private nature, in the just defence of a man's perion, house or goods, it may happen either by the killing of a raving dote, or an insurrection, 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 when a man kills one who affails him in the highway to rob or murder him; or the owner of a house, or any of his servants, or lodgers, &c., kill the robber who attempts to burn it, or to commit in it suicide, robbery, sabbath breaking, 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 furious, and under such apprehension that he cannot tell whom he strikes upon himself; but in other circumstances, he could not have justified the killing of such an one, but ought to have apprehended him, &c., 1 Hawk. P. C. 71. 71. 24 H. 8. cap. 5. Dalt. cap. 98.

Neither shall a man in any case justify the killing another by a preface of necessity, unless he were himself wholly without fault in bringing that necessity upon himself; for if a man, in defense of an injury done by himself, kill any person whatever, he is guilty of manslaughter at least; as where divers rioters wrongfully detain a house by force, and kill those who attack it from without, and endeavour to burn it. 1 Hawk. 72. 47. H. P. C. 37.
Excusable homicide is either per insurrectionem, or fe défendens. 

Per insurrectionem or by misadventure, is where a man in doing a lawful act, without any intent to do harm, by the negligence of his own, or of a person who is with him, or by the negligence of a labourer at work with a hatchet, the head thereof flies off, and kills one who stands by. 

Hawk. 73. H. P. C. 58, 59.

Where a workman, having first given loud warning to all persons to stand clear, flings down a piece of timber from a great height, and by the negligence of him, if a man fall, who happens to be underneath: But if any person fling 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 repect of the number of people continually passing by, he is guilty of manslaughter. 

Hawk. 73. H. P. C. 58, 59.

Where a workman throws stones, rubbiff, or other things, from a houfe, in the ordinary course of their business, by which a perfon underneath happens to be killed; if they look out and give timely warning to those below, it will be excusable; but if they do it without due caution, it will amount to manslaughter at least; it was a lawful act, but done in an improper manner. It is laid by fome, that if this be done in the streets of London, or other populous towns, it will be manslaughter notwithstanding the caution above-mentioned. But this will admit of some limitation, if it be done only in the morning, when few or no people are walking and the ordinary caution is used, it feemeth that the party is excusable. But when the ftrets are full, that will not suffice; for in the hurly and noife of a crowded street, few people hear the warning, or sufficiently attend to it. 

Pf. 235, 9.

Where a schoolmaster in correcting his scholar, or a father his fon, or a master his servant, or an officer in whipping a criminal condemned to fuch punishment, happens to occasion his death; yet if four perfons in their correction, be guilty of malice, and thereby cause the party’s death, they are guilty of manslaughter at leaft; and if they make use of an infirm unront for correction, and apparently indulging the party’s life, as in an iron bar, or fword, or kick him to the ground, and then flamp on his belly, and kill him, they are guilty of murder. 


Where one lawfully using an inferioe diversion, as shooting at butts, or at a bird, be by the glancing of an arrow, or such-like accident, kills another. 


Where a perfon happens to kill another in playing a match of foot-ball, wrestling, or such like sports which are attended with danger, without any intent either for the trial, exercise and improvement of the strength, courage and activity of the parties. 


But if a perfon kill another by throwing at a deer, or a third perfon’s park, in the doing whereof he is a trespasser; with throwing a fword, or a gun, or throwing stones in a city or highway, or other place where men usually resort, by throwing stones at another wantonly in play, which is a dangerous sport, and has not the least appearance of any good intent; or by doing any other fuch like action as cannot but endanger the bodily hurt of one some or other; or playing at any sport without the King’s command; or by partying with naked swords, covered with buttons at the points, or with swords in the scabbards, or such like rafh sports, which cannot be used without the manifold hazard of life, he is guilty of manslaughter. 

Hawk. 74. H. P. C. 24, 25. 3 Jef. 117.

And if a man happen to kill another in the execution of a malicious and deliberate purpose to do him a pernial hurt, by wounding or beating him; or in the wilful commiſſion of any unlawful act, which necessarily tends but to attempt with the danger of an unforeseen hurt to some one or other; as by committing a riot, robbing a perfon, &c. he shall be adjudged guilty of murder. 


And a furer, he shall come under the fame conftruction, who under pretence of a deliberate intention to commit a felony, chances to kill another, in the act of doing that atame with an overt act of violence, or with fuch perfon as be by fuch persons are by no means favoured, and they must all their take care of the confefion of their actions; and it is a general rule, that wherever a man intending to commit a felony, happens to commit an accident as is as much guilty as if he had intended the felony which he actually commits. 

Hawk. 74. 3 Jef. 56. Keilw. 117. H. P. C. 52.

If any one shoot at any wild foul upon a tree, and the arrow killeth any reasonable creature after it, without any evil intent, this is by misadventure; for it was not unlawful to shoot at the wild foul: But if he had shot at a cock or a hen, or any time foul of another man’s, and the arrow by mischance had killed a man; if his intention was to feast 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 barely manslaughter. 

Pf. 258, 9.

The rule before laid down fuppofeth, 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 perfon not qualified by law to keep a perfon for that purpose; the cafe of a perfon offending, will fall under the fame rule as that of a qualified man. For the fettures prohibiting the deftrution of the game under certain penalties, will not in a quell of this kind enhance the accident, and thereby make it a foul. 

Pf. 258, 9.

Neither flall he be adjudged guilty of a lefs crime who kills another, in doing fuch a wilful act as fhews him to be as dangerous as a wild foul, and an enemy to man-kind in general; as by going deliberately with a bow and fword, or discharging a gun among a multitude of people, or throwing a great stone or piece of timber from a houfe into a street, through which he knows that many are paffing; and it is no exceffe that he intended no harm to any one in particular, or that he meant to do it only for sport, or to frighten the people, &c. 

Hawk. 74. H. P. C. 52, 57. 3 Jef. 57. Dalt. cap.
Homicide, fe defendants, or by self-defense, seems to be where one who has no other possible means of preserving his life from one who conspires with him on a sudden quarrel, or of defending his person from one who attempts to beat him, (especially if such attempt be made upon his honor, &c.) kills the person by whom he is reduced to such an inevitable necessity. 1 Haw. P. C. 74, 75. H. P. C. 40. S. P. C. 15.

And not withstanding a person, who retreats from an assault to a wall, or from some such treachery, beyond which he can go no further, if it kills the treacherous, is adjudged by the law to act upon an unavoidable necessity: But also who he being affighted in such a manner, and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 1 Hawk. 75. Bro. Cor. 125. 43 dig. 31. 3 lefl. 56. H. P. C. 41.

And notwithstanding a person, who retreats from an assault to the wall, give the other divers wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide fe defendaifs only. 1 Hawk. 75. H. P. C. 41. Crown. 28. S. P. C. 12.

And an officer who kills one that kills him in the execution of his office, and even a private person that kills one who feloniously affights him in the highway, may justify the fact without ever giving back at all. 1 Hawk. P. C. 75. H. P. C. 41. 3 lefl. 56. H. P. C. 28. a.

According to most good opinions, even he who gives another the first blow on a sudden quarrel, if he afterwards do what he can to avoid killing him, is not guilty of felony; yet such a person seems to be too much favoured by this opinion, insomuch as the necessity to which he is at first reduced, was at the first giving to his own fault.

It is not agreed, that if a man strike an officer upon malice prepens, and then fly to the wall, and there kill him in his own defence, he is guilty of murder. 1 Hawk. P. C. 75. S. P. C. 15. a. Crown. 28. a. Dall. cap. 98. Kelsey 58. H. P. C. 42.

It seems clear, that neither of these homicides are felonies, because they are not accompanied with a felonious intent, which is necessary in every felony. 1 Hawk. 75. 3 lefl. 56. 2 lefl. 149.

And from hence it seems plainly to follow, that they were never punishable with loss of life: And the same also further appears from the writ De foii & aie, by which when, if any person committed for killing another, were found guilty of either of these homicides, and no other crime, he might be bailed; and indeed it seems to be against natural justice to condemn a man to death, for what is owing rather to his misfortune than his fault. 1 Hawk. 75.

It is true indeed, that some of our best authors have argued from the statute of Marlisle, Ch. 26, which enacts, that murderum de eisere non adjudicaret, ubi in situ clausum adjudicatum est. That before this statute homicides by maladyventure, or fe defendaifs, were adjudged murder, and consequently punished by death. 1 Hawk. 75. 2 lefl. 56. S. P. C. 48.

But to this it may be answered, that murder in those daysSignified only the private killing of a man, by one who was neither seen nor heard by any witneses, for which the offender, if found, was to be tried by ordeal, and if he could not be found, the town in which the last habitation was, to be amerced forty-six marks, unless it could be proved that the person killed was an Englishman; for otherwise it was prefixed that he was a Dane or Norman, who in those days were often privately made away by the English. And it being a doubt whether homicide by maladyventure, or fe defendaifs, were to be esteemed murder, or not, it seems there was been the chief intent of the makers of this statute to settle this question. 1 Hawk. 75. Balf. 134. b. Kelsey 121. Bradl. 135. a.

However it is certain, that notwithstanding neither of these offences be felony, yet a person guilty of them is not liable by judiciles of peace, but must be committed...
AND in some cases a man shall be said, in the judgment of the law, to kill one who is in truth actually killed by another, or by himself; as where one by ducet of impeachment compels a man to accuse an innocent person, who on his evidence is condemned and executed; or where one compels a man to kill himself or another; or where one lays petition to an indidtment to kill another, which was afterwards accidentally taken by another, who dies thereof; 1 Hen. P. C. 79. S. P. C. 36. c. 3 Inf. 91. Dott. cap. 93. supra eb. 1. f. 7. Plow. Civ. 474. and 475.

Alfo he who wilfully neglects to prevent a mischief, which he may, and ought to provide against, is, as some have said, in judgment of the law, the actual caufe of the damage which ensues; and therefore if a man have an ox or hare, which he knows to be mischieffull, by being used to goe or sitke at those who came near them, and do not tie them up, or leave them to their liberty, and they afterwards kill a man; according to some opinions, the owner may be indicted, as having himfelf killed him; and this is applicable to the Mofaicall law. However, as it is agreed by all, such a person is guilty of a very gros misdeemeare. 1 Hen. 79. Fiz. Crown 311. S. P. C. 17. a. Cent. 33. & K. Exc. cap. 93. Pult. 122. b. H. P. C. 53. Exdon. c. 2. v. 29.

Alfo it is agreed, That no person 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 hurt was done shall be reckoned the first of the next indictment. 70. P. C. 70. H. P. C. 55. Pult. 123. a. Dott. cap. 93 S. P. C. 21. d.

But if a person 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 himfelf. 1 Hen. 79. 3 Inf. 53. Kefynge 25. 1 Ed. 17.

As to the place where fuch killing is within the compu- lation of the law, it feems, that the killing of one who is both wounded and dies out of the realm, or wounded out of the realm and dies there, cannot be determined at Common law, because it cannot be tried by 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 beyond fea, and it is faid by fome, that the death of him who dies here of a wound given there, may be heard and determined before the confable and martial, according to 24 Ed. 1. p. 19. a. the civil law, and the King is to apoye a confable. And it feeme alfo to be clear, that when a fact is 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- fioners appointed by the King, in any county of England. 1 Hen. 75. 3 Inf. 48. 2 Inf. 51. Co. Lit. 75. S. P. C. 65. a. Brf. Appeal 153. 2 Cor. 247. 1 Ed. 19.

A murder at fea was ancienly recognizable 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, accord- ing to the course of the Common law; yet the killing of one who is at land of a wound received at fea, is nei- ther determinable at Common law, nor by force of either of these statutes; but it feems, that it may be tried by the confable and martial, or before the commissioners appointed in pursuance of the afofcd statute of 33 H. 8. 23 1 Hen. 70. 3 Inf. 48. 49. 1 Law. 759. H. P. C. 54. 3 Inf. 48. 49.

And it is faid by fome, that the death of one who died in one county, of a wound given in another, is not indelible- able at all at Common law, because the offence was not complete in the place where the wound happened, but 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 enquered of by a jury of the fame county. And it is faid, an appeal might be brought in either county, and the fact tried by a jury returned for the other county. And at this day, by force of 2 & 3 Ed. 6. 24. the whole is triable by a jury of the county wherein the death shall happen,
Hawk. Hawk. Hawk.

1. Kelynge Ltv. Sf.-

Appeal with whatever crime he is guilty of murdering, and talk calmly therein, or perhaps if he has no

consideration to say, that the place wherein the quarrel happens, is not convenient for fighting; or that if he should fight at present, he should have the disadvantage, 1 Hawk. 80. Kelynge 56. 1 Lev. 120.

And if A. on a quarrel with B. tell him that he will not strike him, but that he will give B. a pot of ale to strike him, and thereupon B. strikes, and A. kills him, he is guilty of murder; for he shall not elude the justice of the law by such pretence to cover his malice. 1 Hawk. 81. H. P. C. 48.

And in like manner, if B. challenge A. and refuses to meet him; but in order to evade the law, tells B., that he shall go the next day to such a town about his business, and accordingly B. meet him the next day in the same condition to defend himself, and then about him, A. and B. fight, and A. kills B. is in my opinion guilty of murder, unless it appear by the whole circumstances that he gave B. such information accidentally, and not with a design to give him an opportunity of fighting. 1 Hawk. 81. Cor. Cen. 22. H. P. C. 48.

And at this day it seems to be settled, That if a man slays another with malice prepense, and after be driven by him to the wall, and kill him there in his own defence, he is guilty of murder in respect of his first intent. 1 Hawk. 81. Cor. Cen. 22. 6. Dalton. cap. 93. H. P. C. 47. Kelynge 58. Hugmore's case.

But it is said, that if he who draws upon another in a sudden quarrel, makes no pase at him till his sword is drawn, and then fight with him, he is guilty of manslaughter only, because that by affaulting the other, in a most outrageous manner, without giving him an opportunity to defend himself, he knew that he intended not to fight with him, but to kill him, which violent revenge is no more excused by such a flight provocation, than if there had been none at all. 1 Hawk. 81. Cor. Cen. 23. a. 6. Dalton. cap. 94. Hugmore's case.

And according to this notion, it is thought proper to consider, 1. Such murder as is occasioned through any excusable personal injury to him who is slain in particular; which seems to be most properly called expreti malice. 2dly. Such as happens 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 is slain, in which case the malice feems be he generally laid to be implied. 1 Hawk. 80. Kelynge 127. Spen. 756.

As to murder in the first senfe, such as flew a direct and deliberate intent to kill another, as poisoning, stabbing, and such like, are so clearly murder, that there are not any questions relating thereto worth explaining: But the cases which have been disputed, have generally happened in the following insances. 1st. In dealing. 2dly. In killing another without any provocation, or but upon a fight one. 3dly. In killing one whom the peron killing pretended to hurt in a less degree. 1 Hawk. 80.

In the first infulance of this kind, it seems agreed, that whereas two persons 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 first struck by the deceased; or that he had often declined to meet him, and was prevailed upon by the prosperity of manhood only, because he did it in the heat of blood; 1 Hawk. 82. 81. 6. Balf. 86. 87. 6. Balf. 147. 1. Roll. Rep. 395. 3. Roll. 171. 2. H. P. C. 48.

But and from that clearly follows, that if two per-
H O M M
the 50. 1 Hawk. 82. Gr. 23. 4. 4 alt. cap. 93.

But the law to far abounds all dulling in cold blood,
that not only the principal who actually kills the other,
but also his second is guilty of murder, whether they
came to it in self defence, or to prevent a greater
harm, or to prevent committing other crimes, or in
respect of that countenance which they give to
their principals in the execution of their purposes,
by accompanying them therein, and being ready to bear a
part with them: But perhaps the contrary opinion is
just, for it seems too far a construction to make a man by such
reasoning 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. Debt. cap. 93.

As to the happening of this kind, viz. first mur-
ders as happens in killing another without any provoca-
tion, or but upon a flight one it is to be observed,
that wherever it appears that a man killed another, it shall
be intended prima facie that he did it maliciously, unless
he can make out the contrary, by showing that he did it
on a sudden provocation, 1. 1 Hawk. 82. Kyenge 27.

Also it seems to be agreed, that no breach of a man's
word or promis, no treaflps either to lands or goods,
no affront by bare words or guefBers, however fale or malici-
ous it may be, and aggravatcd with the most provoking
circumstances, will exceeu from being guilty of
a murder not by far enough to be a fufficient

But if a person so provoked had beaten the other in
only a manner, that it might plainly appear that he
meant not to kill, but only chaffed him; or if he had
reftrained himself till the other had put himself on
his guard, and then in fighting with him had killed him, he
had been guilty of manuflaughter only. 1 Hawk. 82. Kyenge 55 61. 131.
in the event of the second offence shall he be adjudged guilty,
who seeing two persons fighting together on a private
quarrel, whether fudden or malicious, takes part with one
of them, and kills the other. 1 Hawk. 82. Kyenge 61. 136. 4 cen. Jefc. 296. 12 Co. 87.

Neither can he be thought guilty of a greater crime, who
was fighting with him, or being actually
struck by him, or pulled by the nose, or clipped
upon the forehead, immediately kills him; or who hap-
pens to kill another in a contenance for the wall; or in
the defence of his perfon from an unlawful affault; or in
the defence of his house from those who claiming a title
to it, attempt forcibly to enter it, and to that perfon
shout at it, &c. or in the defence of his pillory of a
room in a publick house, from those who attempt to turn
him out of it, and thereupon draw their swords upon
him; in which case the kiling the affiant hath been
holden by fome to be justifiable: But it is certain, that
he cannot amount to no more than manslaughter. 1 Hawk. 82. 3. H. P. C. 57. 3 Jefi. 55. Kyenge 137. H. P. C. 57. Gr. 27. a. Kyenge 51.

Nor was he judged criminal in a higher degree, who
feeing his fon's nose bloody, and being told by him, that
he had been beaten by fuch a boy, ran three quarters of
a mile from home to defend his child, and that the
boy had beaten his child, thereof whereof he afterwards died. 1 Hawk. 83. H. P. C. 48. Cen. Jefc. 296. 12 Co. 87.

As to the third infuffion of the kind, viz. fuch mur-
ders as happens in killing one whom the perfon killed in-
tended to be, a lefs degree; as to which it is to be
observed, that wherever it is a matter of
revenge, unlawfully and deliberately beats another in
such a manner that he afterwards dies thereof, he is
guilty of murder. However unwilling he might have
seen to have gone to far, 1 Hawk. 83. Noy. 11. Almarg's case. H. P. C. 49. 50. 51. 52.

Also if seems, that he who upon a sudden provocation
executes his revenge in such a good manner, as to the
cool and quiet, and that is not his purpose, is guilty of
murder, if death ensue; as where the husband or other
ought to find a bow flaying wood, tied him to a horfe's tail,

As to the case where such killing shall be adjudged
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 slain, they are as follow. And first, Such
killing as happens in the execution of an unlawful action,
whereas the principal iutention was to commit another
tehy; it seems agreed, that wherever a man happens to
kill another in the execution of a deliberate purpose to
commit any felony, he is guilty of murder; as where a
perfon shooting at tame fowl, with an intent to hit
them, accidentally kills a man; or where one fet upon
a man to rob him, and kills him in affault upon him; or
where a perfon shooting at, or fighting with one man
with a design to murder him, kills him, and kills an-

What is said of such cases, where the were all of
a person having such a felonious intent, is the subsequent
cause of a third person's death, but also where it is
way exceptionally causes such a misfortune, it makes him
guilty of murder; and such was the case of the husband,
who gave a poisoned apple to his wife, who eat not
enough of it to kill her, but innocently, and against
the husband's will and perfuafions, gave part of it to a child
who died thereof; such also was the case of the wife who
mixed rathbane in a potont fent by an apothecary to her
husband, which did not kill him, but afterwards killed
the apothecary, who to vindicate his reputation tainted it.
It is not material in this cafe, that the fhring of the potion
might make the operation of the poison more forcible
than otherwise it would have been; for inasmuch as such a
murderous intention, which of itself perhaps in ftrictnefs
might juftly be made punishable with death, proves now
the operation of the King's losing a fajcEh, it shall be as severely punished as if it had been intended
effect, the miling whereas to oeing to any want of
malice, but of power. 1 Hawk. 84. Plew. Cam. 474. 9 Co. 91. b.

But if one happened to be poisoned by rathbane laid in
order to deftroy the perfon by whom he is fo
killed, is guilty of homicide per accidementum only, because
his intentions were wholly innocent. 1 Hawk. 84. Pl.
Cam. 474. 9 Co. 91. b. a.

Also if a third person accidentally happen to be killed
by one engaged in a combat with another upon a fudden
quarrell, it seems that he who kills him is guilty of man-
uflaughter only; but it hath been adjudged, that a per-
son, whether of peace, confable or watchman, or even a priva-

c perfon be killed in the endeavouring to part those whom
he fees fighting, the perfon by whom he is killed, is
guilty of murder; and that he cannot excuse fhimself by
alleging that what he did was in a fudden effay in the
heat of blood, and through the violence of passion,
for he who carries his refentment to high as not only to ef-
cute his revenge against those who have affronted him,
but even against fuch as have no otherwife offended him
but by doing their duty, and endeavouring to refrain
the violence of others, it is a good defence, that he
was justified in a manner, and the breaker of the parties in
the
the King's name to keep the peace, or otherwise man-
feftly shewing his intention to be not to take part in the
quarrel, but to appease it; he who kills him is guilty of
manflaughter only, for he might suspect that he came to
kill him, and therefore it is not a felony, nor a 

As to the second inftance of this kind, viz. such kil-
ning, as happens in the execution of an unlawful action,
where the principal defign is to commit a bare breach
of the peace, not intended against the perfon of him
who happens to be slain; it seems clear, that where dis-
ercers resolvling generally to reflit all oppofers in the
comniin of any fit breach of the peace, and to execute
it in fuch a manner as naturally tends to raife tumults
and affrays, as by confmitting a violent diffeft with great
numbers of people, hunting in a park, &c. and in fO doing
kill to man, they are all guilty of murder; for
they make a defign, or abufe the danger of their
offenders, who willfully engage in fuch bold disturbances of the pu-
llick peace, in open oppofition and defiance of the ju-
fice of the nation. 1 Hawk. 85. Savil 67. More

Yet where divers rioters, having forcible poiffeflion of a
houfe, afterwards killed the perfon whom they had ejected,
as he was endeavouring in the night forcibly to regain the
poiffeflion, and to fire the houfe, they were adjudged
guilty of manflaughter only, notwithstanding they did the
faft in maintenance of a deliberate injury, perhaps for
the murder of another; the perfons that did it were all
forfeeters.
The first point of this kind, viz. such killing as happens in the execution of an unlawful slicon, where no mischief was intended at all, it is said, that if a person happen to occasion the death of another, in advicing or advising the person to perform his duty and the main defect of some others; as by rising with a horse known to be used to kick among a multitude of people, by which he means no more than to divert himself by putting them into a fright, he is guilty of murder. 1 Hawk. 87.

As to the sixth instance of this kind, viz. such killing as happens in the execution of an unlawful slicon, where no mischief was intended at all, it is said, that if a person happen to occasion the death of another, in advicing or advising the person to perform his duty and the main defect of some others; as by rising with a horse known to be used to kick among a multitude of people, by which he means no more than to divert himself by putting them into a fright, he is guilty of murder. 1 Hawk. 87.
The body of such criminal to be hung in chains. See sect. 5.

When one conveys away secretly or keeps in his custody another man against his will, then upon oath made thereof, and a petition to the Lord Chancellor, he will grant a writ of requitio facti, with an alias, and pluries, upon which the sheriff returns an elongatus, and thereupon issues out a capias in quibulum, made by the sheriff, 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 habitus corpus to the sheriff to bring him into court, and bail him, or eafe remand him. 2 L. R. 23.

A homine requitio cannot be brought either by the wife herself, or by her procurator agnus against her husband; and the nature and proceedings in the writ shew it to be so. Peijia. 1718. Ch. Prax. 492. Atwood v. Atwood.

Habeas corpus was returned, that W. was in custody by capias in quibulum. The case was, That upon a homine requitio, the sheriff returned an inquisition, finding that the party was elogium; whereupon a writ homine made, returnable Otho. Martinius, which was not yet come; but the defendant was taken upon it. It was objected, that he could not be bailed upon the writ homine for that it was an execution, and he had no day in court, and the plaintiff could have a new writ homine. That which seemed to be the fene of the Chief Justice, to which the refl agreed was, (among other things) that after elogium returned, and writ homine also awarded, the defendant is not concluded to plead non est against the action, because he obliges the return, and that upon pleading non est he shall be bailed. And they disliked the cause in Rym. 374. and the Lord Grey's cause, Skin. 61. but approved the cause in the Regis 79. a. and cited Kel. 71. a. P. N. R. 74. adding this farther reason, that because the former writ is denied, and balled, and the matter stands indifferent on the record, and having been bailed laid down by Lord Cott., upon Hig. 1. cap. 15. The court held, that there might be a new writ homine; for the bail must be in a sum certain with condition, that he appear to die in deces, and if judgment be aed and him, that he render his body to writ homine, otherwise removeth the bail; and that the plaintiff may not go at large, and therefore if he be rendered, he is in custody as before; and the court held, that before the writ homine returned, the defendant cannot be bailed. 2 Salk. 381. Mod. 12. I. 5. B. R. 38. h. Nuts. 107.

The defendant pleaded in abatement, want of addition in the pluries, as to his plea, as to bail, as to quia emptor. The plaintiff demurred; Hilt Ch. J. at first, inclined strongly, that the plea was good, and would distinguish this from other writs of replevin; for here, he said, the proceeds of outlawry issues immediately upon the pluries homine requitio, which he affirmed to be a writ homine in itself; but in common writs, the proceeds of outlawry is not upon the pluries requitio, but upon the capias in quibulum, which files upon the sheriff's return of aderentia elogium upon the pluries; and upon the sheriff's special return of the capias in quibulum, that is, upon his return of mulla bona on the writ homine, a capias shall go against the perfon, and fo to outlawry. But by Petrol J. There is no difference; for in both cases, the proceeds of outlawry is upon the writ homine, and not upon the original writ; for in a homine requitio, there shall be no writ homine 'till return of the homine requitio; and as the first writ homine in common return must be (as afore) in the writ homine, which was the first return of the perfon, thereon the whole court awarded a requitio suitor; for in outlawry lies in a homine requitio, yet there is not any addition to it. For the pluries, on which we hold plea here, is not the original in replevin; but the original writ of replevin is it, which writ is vicissits; so if the replevin be removed by recorders, this upon the homine requitio then there will be proceeds of outlawry, yet there is no addition according to the writ, so that it is not the original, and therefore out of the writ homine. There being no addition to the first replevin, the pluries, (which indeed is the original to us) must have none; but proceeds out of the first replevin, so that it is said, that there never is any addition to a writ that is vicissits. 6 Mod. 84. Mod. 8. Ann. B. H. Lord Bacon v. How. See 1d. Vin. Abt. iv. Homine requitio.

Domina. A sort of feudatory tenants. They claimed a privilege of having their cauks and persons tried only in the court of their lord. When Gerard de Cornil in 5 R. 1. was charged with treason and other high misdemeanors, he pleaded, that he was Hono comites Johannis, and would come to the law or justice of his court. Pauchald. Antiquit. p. 152.

Homplagium. Is used in the laws of Hen. 1. cap. 82. for the pluries capias. So gnis in domo vel curia Regis facere habitationem et homplagium; Dominae. A home-hill, or manor-houfe. As in a charter granted about the 5 Edw. 1. Cowett, edit. 1727.

Hendehbrenden, (from the Saxon, hond, hand, and haboden, having,) Signifies a circumstance of manifeft theft, when one is apprehended with the manner or wittinger, i.e. the thing stolen in his hand. Briston, lib. 3. tradt. 2. cap. 8. 32 & 35. who also uses hendehbrenden in the same fente, 6. Latra manufcrn. See Hendehbrenden. So in Fisto, lib. 1. c. 35. Forst manufcrn of us alias legitto depli eventus fisit de aliquo terrino hand-haboden. 22 backhouse, &c. i. 5. dividend or aliquam aquis re lais qui dextrum quod aliquid juxta, &c. J. B. le fide, que dedit uocifer, &c. limes, &c. Has ilec rafterionem i.rum patet populari criminaliter ali quater.

It also signifies the right which the lord hath of determining this offence in his court.

Hone, The penalty of convining it, or selling it in the mane of the lord. 23 Edw. 11. c. 8. f. 4.

Dontud, be, belaves the general significatiun, fized efficently for the more noble fort of frigerniers, on which other inferior bulethings or menors depend, by performance of some cufions or services to they who are lords of them; (though anciently banter and borony signified the same;) be, belaves the poft, or the order of the gabinets, fedis, fedis pluram recordis, concomitantes, frequentis, &c. Be honor pharma complemtarum mensae, pharma fedis militaria, pharma regia, junctus dedit usum utrius de

Buchheims.
benefit for freedom regale, tentamque for prorsum in capite, nam assumere istis honores by act of parliament, may in part be collected out of the statute of 33 Hen. 8. c. 37, 38. where Angilsh, Grafton, and Hamilton Courts, are made honours. And by 37 Hen. 8. cap. 18. the King is impoverished by letters patent to erect four several honours, viz. Wollaston, Kingdom of Cornwall, Arundel, and Donnington, 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 Wigmore, Lancaster, Apulia, (formerly Picterg,) Clare, Tickhill, Wallingford, Nottingham, Basing, Wil, and Esq Greenwood, Belford, Northumberland, Hoxholm, Wragby, Brudisland, Beverley, Spital, Wymington, Cn, Raleigh, Montgomery, Hunsdon in Herefordshire, Eye, Darmon's Gill, Gloucester, Arundel, Trenorton, Richard's Caflis, Croft-Church, Heregrove, Cocker-moat, Bulleardis, Stafford, Burydale, Wetherenden in Yorkshire, Totnes, York, (Rot, Pipen 31 Hen. 2.) Cambridges, Candis, Thyn, Oakhampton (had 92 knights-fees belonging to it.) Grimsthorpe, Eyeworth, Oxford, Lincoln, Abergeve, Dudley, Tamworth, Moston, Welford, Barns, Middleham, Hadon-Cullen, Droge-Coffle, (Trin. 33 Hen. 1. l. 1c. 46.) Croydon, (Ex. 9 Hen. 7. cap. 1.) King John'scaflis, Houghton, Hitchin, Harford, Newcome, Chelcer, Lewest, Pickering, Meddon, Tuttle- warwick, Worsham, Brenchale, Bremether, Halton, Gobour; for John de Madox and Ex. 5. wrote himself Dominus Infidelis de Heslham & de dominicos de Gobour & Bremether. And in a charter of 15 Hen. 3. I find mention of the honours of Dermenard, Cargis and Cl wormagen, Cowell, edit. 1727.

When the King grants an honour with appurtenances, it is more high than if a manor was granted with the appurtenances; for to an honour, by common ctement, appurtenances, Placema, Church, dignity, decadence, frondalis, is called an honour. In Illner in the time of Ed. 3. Roll. 151. Scarp. For a manor and honour are not of one condition.

An honour ought to consist of lands, liberties and franchises. 1 Bosb. 157. Pofh. 10 Jan. The King v. Lovett.

The King cannot create an honour, but by act of parliament: for etat. cur. 1 Bosb. 156. Pofh. 10 Jan. The King v. Lovett.

The King granted to a subject a great honour, called An Honour, and plaited by the name of An Honour; and that name hath stood to this day. King Richard the Second created Ralph Newell Earl of Warwickland, to him and his heirs males of his body, which honour defended to Charles Newell, Earl of Warwickland, who was attainted of treason; adjudged, that a name of dignity or honour may be intailed upon one and that name of his body, and that such an intail is within the statute De dote, 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 attainder to treason, and this by a condition in law, annexed to the dignity, viz. that no son of this house, or of any person derived from him, may hold any temporal cas & sufficient cas temporal & 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 hereditamentum, for a dignity is an hereditamentum. 7 Reg. 29. 315. c. 2.

It is illegal to purchase honour, (as a Dukedom) for money. 1 Wm. 5. Pofh. 1c. 45 E. of Kinglon v. Lady Edw. Pierspint. At this day the Earl of Arundel only hath his Earldom by presentatio, the beginning of which is time out of mind, and consequently the beginning of his Earldom is the most ancient in the realm. 1 Bosb. 156. The King v. Lovett.

Bounties, cutiris, Are court held within the Honours stofredeil, mentioned 33 Hen. 8. 37. and 37 Hen. 8. 18. and within a court of honour of the Earl Marlsh of England, &c. which determines disputes concerning precenters and points of honour. See Cautille, Chart of Clauses.

Dukedom, cutiris. Are such as are incident to Grand Jefory, and annexed commonly to some honor. See 12 Gor. 2. cap. 29.

Dukedom, cutiris. Com amanuens ab ille libertatis, tamen undes hominem circiter, adem rem. Charta Wil. Comus Major, Aeg. 1 fas. 73.

This should have been written honoratae cutiris, and signifies a thiefy, taken with hand, i.e. having the thing stolen in his hand. Cowell, edit. 1727.

Hoppens, Signifies a valley in Daynsday-book; it so do he hops, hangle and hough. Cowell, edit. 1727.

Plants and hop-binds, the quality on importing or using corrupt hops, 1 Jas. 1. cap. 18.

Hops imported, what duties to pay, 2 IV. & M. fes. 1. cap. 10. 9 Ann. cap. 12.

Made perpetual, and part of the aggregate fund, by 1 Geo. I. c. 12.

What fees payable to Customs-houses for officers for hops brought to London, 1 Ann. fl. 1. c. 26.

Dutes of those of Britisish growth to be under the management of commissioners of excise, 9 Ann. c. 12. f. 5.

No bitter to be used in burning but hops, 9 Ann. c. 12. f. 5.

Foreign hops not to be imported in Ireland, 9 Ann. c. 12.

1 Geo. I. c. 12. f. 6.

Money lent on hop duties how repaid, 1 Geo. I. f. 6. c. 12. 7 Geo. 1. f. 6. c. 20. f. 37. 37.

The drawback on hops exported to Ireland taken off, 6 Geo. I. c. 11. f. 46.

Planters to give notice of the time of bagging, 6 Geo. 2. c. 21. fes. 27.

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, Geo. 2. c. 19. 2. f.

Penalty of 20l. per hundred horns, Geo. 2. c. 19. 2. f.

Damages to be made good, as by 9 Geo. I. c. 27. Cutting hop-binds, 10 Geo. 2. c. 32. f. 4.

By flat. 6 Geo. 2. c. 37. f. 6. unlawfully and maliciously cutting hop-binds is made felony without benefit of clergy.

Boys Apprentice. The day-bell, or morning-bell, or what we now call the four clock-bell, was called hora auraece, as our right a clock bell, or the bell in the evening, was their igniculum, or coveret. Cowell, edit. 1727.


Hordium, A hoard, a treasure, or repository. As in the laws of King Canute, c. 104. Sed homar hordarium, quod diuere pagiuma depositam & esjam juvat, et trags, id est frumentum solum, debet ipsa cofertere. Cowell, edit. 1727.

Hordium palmace. Hoc induratae situatur, quod Rob. Bevereae. dedit unam virgatam terre in Gillingham, red. inde quolibet anno ad fijum S. Mich. quatuor Brittiffi orde palmace palmis firma justa mulis precision per duos denarios. Decess. 43 Ed. 4. f. fons Kington Payner arm. Doubtless this is meant of barley-barley, which in Norfolk is called sprat-barley, and bartledore-barley; and in the marches of Wales, cynfege, it being broader in the ear, and more like a hand than the common barley, which in old deeds is called Hordium quadrifrons. Cowell, edit. 1727.

Housewearer, piggellers. Are trees so called, that have been usually lopped, and are about twenty years growth, and therefore not loppable. Hord, feft. 407. Soby's cafe.

Hovegeld. Is a compound from the Saxen word hweon, corn, and egel, cattle, signifying a tax within a forest, to be paid for hervd beasts. Cmp. Jurift. 197. And to be free thereof is a privilege granted by the King unto such as he thinketh good. Iam ibid. & Raffel in his Expedition of Words, Quemiam sim de omnibus collection in fores de hulfis carnalis affift. 4 Inft. fl. 399. Et foi
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Size of horses to be pillared in the fen, 8 &. 8. felt. 2.

Horse shall be held in fairs, 31 El. c. 12.

The owner of a stolen horse held in a fair, may have him again, paying the price within six months, 31 El. c. 12. felt 9.

Exportation of horses permitted, and the duty on them aforesaid, 22 Car. 2. c. 15. felt. 8.

Huckney coaches to be 12 hands, 9 Ann. c. 27. felt. 14.

Horses at races to be entered by the owner, 13 Gr. 2. c. 19.

Horse-racing for plates under 50l. or with horses carrying small weights, prohibited, 13 Gr. 2. c. 19. felt. 15.

Horses may run for the value of 50l. with any weight, and at any place, 18 Gr. 2. c. 36. felt. 11.

For other matters, see Cattle, Fairs and Markets, Felons without Clergy, (under Felon) tit. Agricultura and Horse-racing.

Horses bred. Action on the cafe lies for abusing a horse bred, by immediate riding, &c. And a difference has been made in our law betwixt riding a horse and horseracing for plates, or, in the first cafe, the party may set his servant, &c. upon the horse, but not in the second. 1 Met. 210.

Horses for the King's service. None shall take the horse, or any part thereof, without the King's service or officer's consent, or sufficient warrant; on pain of imprisonment, &c. Stat. 20 Ric. 2. c. 12.


Horses gentilizate, A great chamberlain, Da Frazier, Hospitallers, (Hospitallor, &c.) were the knights of a religious order, so called, because they built an hospital at Jerusalem, wherein pilgrims were received. To these Pope Clement the Fifth transferred the Temples, which order, by a council held at Fieren in France, he suppressed, for their many and great offences. The institution of these temples was first allowed by Pope Gregory the Second, and stamped with the privilege of the Pope, and several others, and confirmed by the Parliament, and had many privileges granted them, as immunities from payment of tithes, &c. You shall find their privileges referred to them by Magna Charta, cap. 37, and you shall find the right of the King's subjects vindicated from the jurisdiction of St John's, by the statute of Westminster, cap. 2. 4.

Their chief abode is now in Malta, an island given them by the Emperor Charles the Fifth, after they were driven from Rhodes by Shahyan the Magnificat, Emperor of the Turks; and for that they are now called knights of Malta. They are mentioned 13 Ed. c. 13. felt. 57. Pope Walsingham in Hist. Ed. 2. and Stowe's Annals, hist. All the lands and goods of these knights here in England were given to the King, by 36 Hen. 8. c. 34. See Man. Aug. 2. par. fed. 439.

Hospitals. The ordinances to reform the state of hospitals, 2 Hen. 5. c. 1.

Mayer, &c. of St. Leonard, York, may gather corn, 3 H. 6. c. 2.

Masters of hospitals may occupy the lands of the hospital, tho' they are clergymen, 21 H. 8. c. 13. felt. 7.

A confirmation of grants made to hospitals, 14 Ed. c. 14.

Penalty of a reward for nominating a person to an hospital, 31 Ed. c. 6. felt. 28. 32.

Liberty to found hospitals, &c. 35 Ed. c. 7. felt. 27. 39 Ed. c. 5. 21 Jac. 1. c. 1.

Incorporation of the governors of Gay's hospital, 11 Gen. 1. c. 12.

Establishment of the hospital at Bath, 12 Gen. 2. c. 37. 39 Ed. c. 5. 21 Jac. 1. c. 1.

It is granted to the Governors of the Founding hospital, 13 Gen. 2. c. 20. Money given them, 29 Gen. 2. c. 20. felt. 13.

For building hospitals and work-louses at Bristol, 18 Gen. 2. c. 38.

Money for building the hospital near Glastonbury, 29 Gen. 2. c. 39. felt. 10. 39 Ed. c. 5. 21 Jac. 1. c. 1.

For other matters, see Charitable Uses. Hospitallor, Hospitallor, Hospitallor.
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Hospitium. The fame with procuration, or visitation-money. Et munus Iouae legationis cum ecommunicatus hospitium habebat unum et quidam modesti monasterii minorum hospitium; etiam eorum hospitiatim, &c. &c. Norbert the German, fol. 1193.

Hospitium. Is the fame with Hospitium. See Procuration.

Hospitabilia. A right to receive lodging and entertainment reserved by many lords in the houses of their chamberlains. For this reason the phrase was called "hospitabilia." Hordens.

Hospitellus (Hospitellus), from the French houster, i.e. houster, Signified with us at the first that otherwise are called inn-keepers. Stat. 31 Ed. 3. fl. 2. c. 2.

Hospitellus. A house, (Fr. house.) An instrument used mostly by gardeners, and well known. Et fut qui quis de aurar & tollero, & fejus ferendi, fei collegiato, & hominum facultatis, de obvrat, & de panonis & aduertos, & emittis allis confunstentialibus. Carlota Hamonis Maffy.

Hospitiumidea. Hub, bole, confecrated in the holy churches of the holy church. See Anon. d. 1727.

Hospitiumidea. An hospitorium. See Anon. d. 1727.

Hospitiumidea. 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 order appointed, called Hystitariis, and Hystitariarum. Non Nihilostrum Elyon Elyun, &c. the consecration of the sanctuary, the Middle Ages, or the middle ages, of the Middle Ages, or the Middle Ages, of the Middle Ages, of the Middle Ages, or the Middle Ages.

Hospitiumidea. (Heritarius, from the Lat. offer, a goatherd.) The manor of Braighton, f. Elyon, in the reign of Edw. 2. was held by John Mauduit in capite per fejerantiam matrimonii domini Domini Regis, vel domini boeticum pertinem ad domini Regis. Paroch. Antiquus, paroch. Antiquus.

Hospitiumidea. In partem effet, (Fr. botcheps, a confused mangle, of divers things jumbled and put together.) Among the Dutch it signifies feth cut in pieces, and fodder with herbs or roots, not unlike that which the Romans called granum, which in the statute literally it signifies a pudding mixt of divers ingredients, but by a metaphor signifies a commodity, or putting together of lands of several tenure, for equal division of them, &c. 55. For example; A man feised of thirty acres of land in f. Elyon, hath two daughters, and gives with one of his daughters, to a man that marries her, ten acres of the same land in front-marriage, and dies feised of the other twenty acres. Now, if the feth is thus married will have any part of the twenty acres whereof her father died feised, the muft put her lands, given in front-marriage, in herpotat, that is, the muft refuse to take the soc fluits off the lands given in front-marriage, and fuffer the land to be common, and mingled together with the other lands whereof her father died feised, so that an equal division may be made of the whole between her and her sister, and for her ten acres the feth shall have fifteen acres, ele her fether will have the whole. See Case in Lat. lib. 2. cap. 12, and Britton, fol. 119. There is also in the Civil law eelatis bonum answerable to this, whereby if a child added by the father, do after his father's death challenge a child's part with the ret, he muft caue it in all that formerly he had received, and then take out and every other. Cowell. See Admissit


Boultford. The land there to be of the nature of copyhold, and how to be leased by the ward of the manor, fol. 17 Hen. 8. c. 2.

Bothy. (Hore.) Is a certain space of time of sixty minutes, twenty minutes before the usual hour. See Stat. 5. c. 1. 1727. It is not material at what hour of the day a posin is born. 1 Ed. 13. See Statute.

Bothy. Is a kind of fee paid for burning goods, by a carrier, or at a wharf or key. See H. E. 1727.

Bothy. A place of dwelling, or habitation, also a family or household. In a house four things are needful--

1. Habitatus humanis. 2. Delicatissimis habitantibus, 3. Ne- ceffitas humanis. 4. Substas actis. For any hurt or hinderance to the first, third, and fourth of these an action lies; for profitter no quia faciatur in juro, quod secundum prifer alijens. The lawful of every man is to him as his cattle and forges, goods in the house of small injury and violence, as for his rope, according to the maxim, Damas sunitique ex tutissimum refugium. See C. 5 Rep. Seminae's cafe.

Bothy. The privilege that the law gives to houfe, for the habitation of men, is great; for fith, it ought to have the precedence in a prapate quod reddat before lands, meadows, pastures, and woods, the right of presence of a man hath privilege to protect him against an arrest, by force of a process of the law, at the suit of the fujelicet. Co. Rep. 11. Beaulieu's cafe. Thirdly, Thofe that dig for falt-plate, shall not dig in the manufa-houfe of any fujelicet with right to his affent; for them, he, his wife, nor his children, cannot by the common law, nor by the roads preferred for that. Fourthly, He that kills a man who will rob and spoil in the houfe, shall forfeit nothing. Cowell, edit. 1727.

In cafe of felony, or fujelicet of felony, the King's officers may break the houfe to take the felon; because it is for the good of the commonwealth to take felon, and because in every felony the King has interest, and where the King has interest, the writ of itself is a nov emittas propter aliquam libertatem, and to the liberty or privilege of a houfe shall not hold against the King. 5 Rep. 93. (d.) cites 9 Ed. 4. 9.

A. and B. were joint-tenants of a houfe, A. was bound in a statute to f. Elyon, and died, f. Elyon, sold. The marriag returned him dead; f. Elyon, suifed another writ to extend all the lands which he had when he acknowledged the statute, or after, and all goods which he had at his death; whereupon the fujelicet and jury came to the houfe, the door being open, there being a joint-tenant (A.) and offering to enter, B. shut the door against them. It was resolved, 18. That every man's houfe is as his cufle, as well to defend him against injuries as for his repose. 2. Upon recovery in any real action or ejection, the fujelicet may break the houfe to take it into fettlemet. and deliver felimon, &f. to the plain- riff, the writ being made facing privy, and after judgment it is not the houfe of the defendant in right and judgment of the law. 3. In all cafes, where the King is party, the fujelicet (if no door be open) may break the party's houfe to take him, or to execute other proces of the King, if he cannot otherwise enter; but he ought first to signify the cause of his coming, and requifite the door to be opened; and this appears by the statute 16H. 7. 17. which is only in affiance of the Common law, and without default in the owner, the law will not fuffer a houfe to be broken. 4. In all cafes, when the door is open, the fujelicet may enter and make execution at the faite of any fujelicet, either of body or goods; but otherwise where the door is shut, there he cannot break it to execute proces at the faite of a fujelicet, 5. Tho' a houfe is a cafe for the owner himself and his family and his own goods, &c. yet 'his no protection for a stranger flying thither, or the goods of such an one to prevent law proceedings; and therefore in such cases, after request to enter, and denial, the fujelicet may break the houfe. 5 Rep. 91. a. to 93. a. Mich. 2. 2nd. B. R. Seminae's cafe, also Seminae v. Grynaia.

Commissioners of bankruptcy can't break open a houfe to search for the bankruptcy's goods, unlef the be bankruptcy's goods. 2 Story 247. Mich. 34 Car. 2, B. R. Aout. P. p.
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Genr v. Sparke.

If a person authorized to arrest another who is sheltered in a house, is denied quickly to enter into it, in order to take him, it seems generally to be agreed, that he may justify the breaking open the doors upon a copy from the King's Bench or Chancery, to compel a man to find sureties for the peace or good behaviour, or even upon a warrant from a justice of the peace for such purpose.

So where one known to have committed treason is pursued either with or without 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 full case, or to apprehend the affraiers in either case. 2 Hawk. Pl. C. 37. c. 14. 9.

But it hath been resolved, that where justices of peace are, by virtue of a statute, authorized to require persons to come before them, to take certain oaths prefixed by such statute, the officer cannot lawfully break open the doors of the person whom he shall be named in any warrant made in pursuance of such statute, in order to be brought 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 of any. Ibid. f. 11. See 14 Fin. Abs. tit. Habe.

Duties on windows in dwelling houses, 7 & 8 W. 3. c. 18. 5 Ann. c. 13. 8 Ann. c. 9. 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,

6 G. 1. c. 22. fett. 7.

A new duty on houses and windows granted, 20 Geo. 2. c. 3. & 42.

Apartments in the universities to pay as houses,

2 Geo. 2. c. 3. fett. 32.

Provisions for enforcing the payment of the duties,

2 Geo. 2. c. 10.

No settlement gained by paying those duties, 21 Geo. 2. c. 10. f. 13.

For enforcing the payment in Scotland, 26 Geo. 2. c. 17.

Additional duty on houses,

31 Geo. 2. c. 22. fett. 31. 2 G. 3. & 18.

For whom made, see Fabric without Clergy (under Felony) tit. Habeas. Borning.


Vulture, A compound of bashe and late, i.e. compen-

fantis, signifies neither, or an allowance of necessary timber but out of the lord's wood, for the repairing and support of a house or tenement. And this belongs of common right to any kelse for years or for life: But if he take more than is needful, he may be punished by an action of waste. Habeas, says Co. on Litt. fol. 41, is twofold, viz. Eiusaemium assumendi & ordinandi. Cowell, edit. 1777.

House-breaking, or Housetrobbing, 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 same; for this is felony by 23 H. 8. cap. 1. and 3 Ed. 6. cap. 9. And since it is no theft felony, though none be within the house, booth or stall, by 25 El. 15. See Burglary, Robbery.

House-burning, See Arson, Burgling.

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. 22. fett. 2.

Justices of a liberty or corporation may commit to the houses of correction of the county, 15 Geo. 2. c. 74.

Houses of correction to be under the government of the justices, 17 Geo. 2. c. 5. sect. 31.

Whoso may be committed to the house of correction. Vagabonds and disorderly persons may be sent thither, 39 El. c. 4. fett. 3. 4. 7 Jac. 1. c. 4. fett. 4. 12 Ann. fl. c. 2. 23. fett. 6.

Poor persons refusing to work, or wandering, 43 El. c. 1. 7 Ann. fl. c. 23. fett. 5.

Lewd women having husbands, and persons running away, and leaving their children to the parish, 7 Jac. 1. c. 4. fett. 7. & 8.

Or non-conformists against 13 & 14 Car. 2. c. 1. fett. 2.

Poor refusing to go to place of settlement, 13 & 14 Car. 2. c. 13. f. 3.

Or persons offending against the same, 22 & 23 Car. 2. c. 25. fett. 5. & 7. 4 & 5 W. M. c. 23. fett. 3. 11. 5 Ann. c. 14. fett. 2. 4. 9 Ann. c. 15. fett. 4.

Or refusing oaths of allegiance and supremacy, 1 W. & M. fl. c. 8. fett. 9.

Or not wearing badge according to 8 & 9 W. 3. c. 30. fett. 2.

Or persons offending against the act concerning haw-
kens and pedlars, 9 & 10 W. 3. c. 27. fett. 3.

Or offending against fals duty, 1 Ann. fl. c. 21. fett. 5. 9 Geo. 2. c. 18. fett. 2.

Or acting contrary to the acts for preferring the fille-


Permons convict of theft or larceny, 5 Ann. c. 6. f. 2. Peroms not paying penalty for firing houses negligently,

6 Ann. c. 31. fett. 1.

Coachmen and chairmen on misbehaviour, 9 Ann. c. 23. fett. 49. 1 Geo. 1. c. 57. fett. 8.

Offenders against the acts concerning drapery, 1 Geo. 1. c. 15. fett. 6. 11 Geo. 1. c. 24. fett. 18. 7 Geo. 2. c. 25. fett. 2. 6. 1 Geo. 2. c. 28. fett. 10.

Seamen committing disorder in deck-yards, 1 Geo. 1. c. 75. fett. 1.

Or servants employed in adulterating tobacco, 1 Geo. 1. c. 46. fett. 5.

Vagrants, 6 Geo. 1. c. 10. To the most convenient houses of correction, 14 Geo. 2. c. 33. fett. 3.

Co. taylors refusing to work, 7 Geo. 1. c. 13. fett. 6.

Journeymen shoemakers on second condition of im-

bazzlement, 9 Geo. 1. c. 27. fett. 1.

Or weavers, &c. combining against 12 Geo. 1. c. 34. fett. 1.

Or for not paying debts and damages, adjudged by

judges on dispute about wages, 13 Geo. 1. c. 23. fett. 6.

Dyers guilty of deceit, 13 Geo. 1. c. 24. fett. 5.

Or persons convicted of perjury, 2 Geo. 2. c. 25. fett. 2.

Watermen, &c. not paying penalty of acting against

2 Geo. 2. c. 26. fett. 3.

Or mariners defecting, 2 Geo. 2. c. 35. fett. 4.

Or offenders against the act for regulating coal trade, 3 Geo. 2. c. 26. fett. 16.

Or offenders against the act concerning ballasting, 6 Geo. 2. c. 29. fett. 3.

Or for maliciously drawing up flood-gates, 8 Geo. 2. c. 20. fett. 2.

Persons lodging on the coast to run goods, 9 Geo. 2. c. 25. fett. 18.—Or persons not paying penalty for fraudu-

lently removing goods, 11 Geo. 2. c. 19. fett. 4.

Or offending against the act concerning plays and inter-

ludes, 10 Geo. 2. c. 28. fett. 6.

Persons riotously hindering the exportation of corn,

11 Geo. 2. c. 22. fett. 1.

Or on oaths of murther or mistrep, 2 Geo. 2. c. 19. fett. 4.

Vehige, Ready, or quickly. Item diximus de illis lateratibus, qui in vehige aguntur culpibus inimicos, i.e. could not readily be convicted. Leg. Lachian, c. 10. From the Sax. v. heiged, i.e. beiged, in a short time. Cowell. edit. 1777.
HUE

Hudgeld. Significat quiescantiam transegrafsionis illius in fornum transegrafsionem. Fleta, Viz. xii. c. 47. 60. De dictione Fletae is to be expounded for hildgelde, which fee, & querre. When a villain or servant had committed any trespass, for which he derived whipping or corporal punishment, when he bought off his penalty with money, the price of exemption from such punishment was called hudgeld, or hildgelde; hence the name given to the offender, describing the party, and flying as near as he can which way he went; the confable ought forthwith to call upon the parson for aid in seeking the offender, and if he be not found there, then to give the next confable notice, and the next, until the offender be apprehended, or be let him be thus pursued until he be apprehended. Of this Bracton 3. prac. 464. 2. cap. 5. Smith de Rep. Angl. lib. 2. cap. 20. and the fl. 13 Edw. 1. of Wintller. 3. & 28 Ed. 3. 11. u. 27 Eliz. 13. The Normans had such pursit with a cry after offenders, which they called Clamor de havo, whereas you may read the liberal Clamary. cap. 54. And it may probably be derived from barbier, faqatural. Havo is used alone in slat. 4. Ed. 1. b. 2. In the ancient records this is called Hafetum & clamor. See Coke's 2 par. Inst. fol. 172.

But the clamor de havo was not a pursuit after offenders, but a challenge of any thing to be his own after the fashion of our challenge. A loud voice, before many witnesses, affirms it to be his proper goods, and demanded restitucion. This the Scots call buttifum; and Stew ne verb. signif. verb. Hafetum, faith, it is deduced from the Frenchoyer, a. audire, (or rather 182,) being a cry used before a proclamation; the manner of their hue and cry he thus describes, If a robber be done, a horn is blown, and an ort crye, after which, if the party fly away, and doth not yield himself to the King's bailiff, he may be lawfully slain, and hanged up upon the next gallows. Of this hue and cry, see Cramp. 2. Inst. of Peace, fol. 160. and in Rot. Clavij. 30 Edw. 3. a cry, it need not be heard, but he himself, being taken, to take the city of London into the King's hands, because the citizens did not, secedum legem & suffectu demin Regni, raise the hue and cry for the death of Guido de Arisia and others who are slain. Cowell, edit. 1772.

Warriored. Hue is the pursuit of an offender from town to town till he be taken, which all that are present when a felony is committed, or a dangerous wound given, are by the Common law, as well as by the statute, bound to raise against the offenders who escape, on pain of fine and imprisonment. 3 Inst. 116. 27. Inst. of Justice, & inst. of Justice, cap. 28. 109. Fleta, Coram. 395. C. Eliz. 654.

The raising of hue and cry is enjoined by the Common law, which may be called a raising of it at the suit of the King, as well as by several acts of parliament, which may be called a raising of it at the suit of the party that is injured. This party is not only authorized to levy hue and cry, but is also bound to do it under pain of fine and imprisonment. 2 Inst. 172. 3 Inst. 116. 1 Hal. Hist. P. C. 464.

From hence it follows, that although it is a good course, as my Lord Hale says, to have a precept or warrant too, in a case of justice of peace for raising hue and cry, yet it is neither usual nor right, at that place to be so鹘, most especially, for the felony may escape before the justice can be found; also hue and cry was part of the law before the statute of 1 Ed. 3. cap. 16, which first instituted justices of the peace. 2 Hal. H. P. C. 99.

And although also, says he, it is essentially incumbent upon confables to pursue hue and cry when called upon, and they are fervently penitent 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 which they proceed; and so to prevent the inconveniences that may happen by unfirmes, it is most advisable that the confable be called to this action; yet upon a robbery, or other felony committed, hue and cry may be raised by the country in the absence of the confable; and in this there is no inconvenience, for if hue and cry be raised without cause, they that raise it are punishable by fine and imprisonment. 2 Hal. Hist. P. C. 99, 100.

The regular method of levying hue and cry, is for the party to go to the confable of the next town, and declare the fact, and describe the offender, and the way he is gone; whereas the confable ought immediately, whether it be hue and cry, to make search for the offender; and upon the next finding him, to send the like notice, with the utmost expedition to the confables of all the neighbouring towns, who ought in like manner to search for the offender, and also to give notice to their neighbouring confables, and they to the next, till the offender be found. 1 Inst. 116. Dal. Jusfici, cap. 28. Cramp. 178. 2 Haw. P. C. 75.

The confable is not only to make search in his own vill, but is also to raise all the neighbouring vills, who are all to pursue the hue and cry with hornstaves as well as the constables untill the offender be taken. 2 Hal. Hist. P. C. 101.

In case of hue and cry once raised and levied upon supposal of a felony committed, though in truth there was no felony committed; yet those who pursue hue and cry may arrest, and proceed as if a felony had been really committed. 2 Hal. Hist. P. C. 101.

And therefore the justification of an imprisonment by a perdon upon supposition, and by a person, especially a confable, upon hue and cry levied, do extremely differ; for in the former there must be a felony avered to be done, and it is sufficient, but in the latter, viz. upon hue and cry, it need not be avered, but he only levied, upon information of a felony is sufficient, though pre-coch the information were false; and therefore an averment of a felony committed, in case of a justification of an imprisonment upon hue and cry, is not necessary. The reasons whereof are, 1. Because the confable cannot examine the truth or falsehood of the suggestion of him who first levied it, for he cannot administer him an oath; and if he should forbear his pursuit of the hue and cry till it be examined by a justice of peace, the felon might escape, and the pursuit would be lost and fruitless. 2. Because the confable is by several acts of parliament very compellable to pursue hue and cry, and that it is punishable for him to withdraw the cause of the vill, if they do it not. 3. Because that first raised a hue and cry where no felony was committed, viz. the person that gave the false information, is severally punishable by fine and imprisonment, if the information be false; and therefore it be hue and cry for that which is innocent. But in the case that they that pur-sue the hue and cry, may justify the imprisonment of that innocent perdon, and the raifer is punishable; and by the same reason, if he give notice of a felony committed where there was in truth none. 5 Ed. 5. a. 21 H. 7. 28. a. per Red. 2 Ed. 4. 857. 29 Ed. 3. 39. 2 Inst. 172.

If hue and cry be raised against a perdon certain for felony, tho' possibly he is innocent, yet the confable, and those that follow the hue and cry, may arrest and imprison
imprison him in the common gaol, or carry him to a jailice of the peace. 2 Hal. H. P. C. 102.

If the perfom pursu'd by hue and cry be in a house, and the door be closed, and refused to be opened upon demand of the constable, and notice given of his diffes, 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 sum punita in the case of the same law is upon a dangerous wound, or given, and a hue and cry levied upon the offender. 7 Ed. 3. 16. 6. 2 Hal. H. P. C. 102.

It feems in this cafe, that if he cannot be otherwise taken, he may be killed, and the necessity excuseth the constable. 1 Ed. H. P. C. 102.

If a person accused against any person, or where any hue and cry comes to a constable, whether the perfom be certain or uncertain, the constable may search in suffed- pected places within his ville, for the apprehending of the felon. Dott. cap. 28. 2 Ed. 4. 8. b. Camp. of Peace 178. 2 Hal. H. P. C. 167.

But though he may search suffedped places or houses, yet his entry must be per efta opus, for he cannot break open doors barely to search, unless the perfom 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 if it must be always resorted to, that in case of breaking the door, there must be first a notice given to them within of his busines, and a demand of entrance, and a refusal, before doors can be broken. 2 Hal. H. P. C. 103.

If the hue and cry be not against a person certain, but by description of his stature, perfom, clothes, horfe, &c. the hue and cry both justify the constable, or other perfom, following it, in apprehending the perfom so described, whether innocent or guilty, for that is his warrant; it is a kind of process that the lawallows, (not usual in other cafes) viz. to arrest a person by description. 2 Hal. H. P. C. 103.

But if the hue and cry be upon a robery, burglarly, manslaughter or other felony committed, but the perfom that did the fact is neither known nor described by perfom, clothes or the like; yet such a hue and cry is good, as hath been said, and must be pursu’d, tho’ no perfom certain be named or descibed. 2 Hal. H. P. C. 103. 2. Ed. 4. 8. b. But in the checky cafe, all that the constable can do, is to take the persons who purife the hue and cry, to take such perfoms as they have probable cause to suspect; as for instance, Such perfoms as are vagrants, that cannot give an account where they live, whence they are, or such fapceus perfoms as come late into their inn or lodgings, and give no reason why they were there when the hue and cry is given, and the like. 2 Ed. 4. 8. 6. 2 Hal. H. P. C. 103.

And here the justification of the imprisonmen is mixed partly upon the hue and cry, and partly upon their own suspicion; and therefore, 1. in respect that it is upon hue and cry, there needs no averment that the felon was done, yet a must be proved that an information was given that the constable was there, if the arrest be by that constable that first received the information, and to raised the hue and cry; or if the arrest were made by that constable, or those vials 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 felon to be done; but 2. as inasmuch as the hue and cry neither names nor describes the perfom of the felon, but only the felony committed; and therefore the arrest of this or that perfonal perfom, and so applied, is left to the suspicion and discretion of the constable or the people of the second or of the felon, will it, that arrests any perfom upon both gen- eral hue and cry, must aver that he suspected, and therupon a reasonable cause of suspicion. 2 Hal. H. P. C. 104.

But now by the statute of 7 Jac. 1. cap. 5. the con- stable, or any that come in his affiance, even in this case of hue and cry, may plead the general affiance, and give the whole matter of the justification in evidence; for, the pursuit of hue and cry, tho' performed by others as well as the constable, is principally the act of the constable of the ville, and the others are but his deputies or stiftants within the precincts of his constabulate. 2 Hal. H. P. C. 104. 2.

For there can be no doubt but that both by the Common- law, as also by the several statutes which intitute the le- vying of hue and cry, they who neglect to levy one, (whether officers of justice, or others) or who neglect to pursue it when rightly levied, are punishable by indem- nity, and may be fixed and imprisoned for such neglect, 2. 3.

And now by the 8 Geo. 2. cap. 16. fin. 11. it is en- acted, "That every constable of the hundred, and every constable, bottholdcr, headborough or usherman of any town, parish, village, hamlet or tything within the bended, or the branches within the precinct thereof, wherein the robbery shall happen, as soon as the forfeiture shall come to his knowledge, either by notice from the party or parties robbed, or from any other perfom or persons, to whom notice shall be given thereof pursuant to this or any other fature, shall, with the utmost expedition, make and cause to be made, freed fuit and hue and cry after the felon or felons by whom such robbery shall be committed; and if any constable, bottholdcr, headborough or tythingman, shall offend in the premises, by refusing or neglecting to make, or cause to be made, such freed suit and hue and cry, every such offender shall, for every such refual or neglect, forfeit five pounds. but this statute contains also these clauses relating to the raising hue and cry, etc. 

Hudson. Ships to transport horse. *This mentioned in Huscen by the name of worfri. And Brabon- ten, ann. 1190. calls them affers, viz. Rec Tenea. de ded. Regi Anglie. 2 magno nonat quos vacat offer. It doth not appear by Vifans or Somers, whence this word is derived. Some will have it from the French huits, i.e. a doer; because when the horses are on shipboard, the doors or hatches are flut upon them to keep out water. Canali, edit. 1727.


Ufful, A referrant of exactions taken there; 7 Hen. 8. c. 3. Their duties on fit-hill and bersmis restored, 39 Hen. 8. c. 33. 5 Eliz. c. 5. fett. 3. The custom of Hull to have a deputy refident at York, &c. Eliz. 11. 8. 4. For excelling workhouses and maintaining the poor at Hull, and for the same purposes in the town of Hull, etc. 15. 6. c. 6. 2. Hulling, A hill. — Habendum & tenendum dominum pollumam in bullis, & baltinis, i.e. in hills and dales. Mem. Angl. tem. 2. p. 292.


Humber (River) in Yorkshire, fifty-partes and pikes, £c. to be removed, 23 Hen. 8. c. 18.

Hundred (Hundredum, centuriae) Is a part of a thire so called, either because of old each hundred found 100 fiefutors of the King's peace, or a hundred able men for his wars. But by and by think's it called, because it was composed of an hundred families. Till that Bracton tells us, that an hundred contains centum vil- las; and Gibbons Commons tells us, that the life of Man- hach-343 villas. But in these places the word villa must be taken for a country family; for it cannot mean a village, because there are not above 40 villages in that land. So where Ms. Lambert tells us, that an hundred is so called, a samus centum hominum, it must be under- stood of an hundred men, who are heads or chief of so many families. These were first ordained by King Al- fred, the 20th King of the West-Saxons: Aedred Ræs, (litt. Lomard, vers Centurias,) &c. &c. Guthrumus Law, (sets in the chart, and in his Sceat, the hundred was called thou a hundred, and therefore the hundred, £c. This dividing counties into hundreds, for better government, King Alfred brought from Germany; For
For these towns, or centers, is a jurisdiction over a hundred or towns. This is the original of hundreds, which still retain the name, but their jurisdiction is devoted to the county-court, some few excepted, which have by privilege annexed to the Crown, or granted to some great subject, and to remain full in the nature of a franclise. The Crown could only grant to such counties, whereof these hundred-counts, formerly farmed out by the sheriff to other men, were all, or the most part, reduced to the county-court, and to remain at present. So that where you read now of any hundred-counts, you must know they are general archcives, wherein the sheriff has not to do by his ordinary authority, except they of the hundred refuse to do their office. See Wal. part 1. Symbol. lib. 2. f. 228. Ad hundredum post Posbha, &c. as preposterous hundredum post solum St. Mich. Mon. Angl. 2 par. f. 223 a. The word hundred is sometime of an immnute or village, wherein a man is quit of hundred-penny, or penalties due to the hundred. Cowell, edit. 1727.

Hundred is to have jurisdiction or power to administer justice in 100 villis, or of 100 men, or of 100 parishes. Br. Court Bar. pl. 8. cit. B H. 3. 3, per Red. Every hundred in England is an hundred in a county, and every parish in London as a vill in an hundred. 9 Rep. 66 b. Hundreds were either parcel of the counties, and there the sheriff did constitute bailiff, (tou, those hundreds which were anciently parcel of the farm of the sheriff, that the statute 2 Ed. 3. cap. 12. speaks of,) or else they were granted by charter, in lieu of the charges, whereof the hundred sometimes held at farm, and sometimes in fee, called hundreds in fee, liberties of hundreds, manors of hundreds. Per Hobe Co. B. Vent. 405. Hill. 22 & 23 Car. 2, in the cause of Atkins v. Clare.

In King John's time, the kingdom was in grots, and then divided into counties and hundreds, and all persons then came within one hundred or other; and then the King's relations had the government of them, and therefore they were called Confessors, &c. and the Earls, Lord-lieutenants, &c. at this day; and then when the office became troublesome, there were ordained Pistons, which name remains to this day, and the others continue to be called Confessors, but have no power in the county, having only the honorary name of Earls or Comites of such or such a county, &c. and for the better government of these counties, the Pistons were two courts; but this is not altogether true, for as it was given to them as a peer of the realm, but the turn of the Piston had yet a supernodant power, they being derived out of the Piston's turn, as in Dyer 13. And then afterwards the King granted away some hundreds in fee-sable, and some franchises, and the last excluded the King utterly, but the hundreds granted away were not wholly exempt. On this article it is not certain, and the parliament hereupon took notice, that the execution of justice was by this much interrupted, and therefore came the statute of 9 Ed. 2. That if sheriff should be sufficient persons, and have lands in the county, and so able to answer both the King and country, and that bailiffs and farmers of hundreds should be sufficient men. And at this time hundreds were granted for years. Then came the statute of 2 Ed. 3. cap. 4 & 5. That sheriff should continue but for one year. But this took not away the whole inconvenience; for the Crown still granted away bailiwicks and hundreds, for lives, at the consideration of a default, or for the maintenance of the public peace. And so therefore came the statute of 2 Ed. 3. cap. 12. and 14 Ed. 3. cap. 9. By the first it was enacted, That all hundreds and waipontages granted by the King shall be annexed to the county, and not feared. And by the other that all such hundreds and waipontages, as the King shall grant, shall have power to put in bailiffs, for which they shall answer, and no more shall be granted for the future; and one reason of this was, because the King granted away hundreds, and abated not the sheriff's farm. Arg. 2 Show. 80, 89. Poth. 32 Car. 2. L. R. 2.

Other hundreds shall be kept only by those that have land sufficient within the hundred. 9 Ed. 2. p. 2.

Hundred shall be annexed to counties. 2 Ed. 3. c. 12. Shall be left at the ancient farm. 4 Ed. 3. c. 15. 28 Ed. 1. c. 2. 14. Not answerable to persons who are robbed travelling on a Sunday. 29 Car. 2. c. 7. fist. 5. Liable to penalty on exportation of wool, 7 & 8 Will. 3. c. 28. f. 4. Liable to damages sustained by pulling down buildings, 1 Gen. 1. c. 5. fist. 6. By killing cattle, cutting down trees, burning hedges, 6 Gen. 1. c. 22. fist. 7. 29 Gen. 2. c. 36. 9. For destroying turnpikes, or works on navigable rivers, 8 Gen. 2. c. 42. fist. 6. For cutting hedges, 10 Gen. 2. c. 32. fist. 4. For destroying corn to prevent exportation, 11 Gen. 2. c. 22. fist. 5. For wounding officers of the customes, 15 Gen. 2. c. 34. fist. 6. Or by destroying woods, &c. 29 Gen. 2. c. 36. f. 9. All monies recovered against the hundred to be levied by a rate, 23 Gen. 2. c. 46. fist. 34. For other matters, see Huc et cry. Robbery.

Hundredth's, (Hundredth,) Are men impannelled, or fit to be impannelled on a jury upon a controversy, dwelling in the hundred where they are in question lies, Crompt. Jur. vol. 217. and 22 Hen. 8. 6. And default of hundredth's was a challenge or exception to panels of jurors, by our law, till the 4 & 5 Ann. c. 16. enacted that to prevent delays by reason of challenges to panels of jurors for default of hundredth's, &c. writs of venire faciendo should issue in the county at Westminster, shall be awarded of the body of the proper county where the issue is true. Hundredth signifies also him that hath the jurisdiction of a hundred, and holdeth the hundred-court, 13 Ed. 1. cap. 3. 9 Ed. 2. f. 2. and 2 Ed. 3. cap. 4. And sometimes it is used for the bailiff of an hundred. Pecul. Mirror of Justice, lib. 1. cap. Del officio del corone. Hundred-Legh, Signifies the hundred court, from which all the officers of the King's forest were exempted by the charter of King Canuus, c. 9. See Manwood; see also Traficott.


Hunting. See Come, Fletching.

Huntingdon, near Chffer, how repaired, 37 Hort. s. c. 9.

Hunsheerf, A domeckie, or one of the family, from the Sax, byread, familia, and seif, firmus, Bit in annu convenient in hundredem duum quia quinque libri tam hundredreft quam seifari ad digresind. se decanie plena funt. Leg. H. s. c. 8.

Hurters, The cappers and hat-merchants, being called hurriers, were partly one company of the haberdashers. Stour. Survey of London, p. 312.

Hurt, Hap, Hert, Are derived from the Sax, i.e. a wood, or grove of trees. There are many places in Kent, Suffolk, and Hampshire, which begin and end with this syllable; and the reason may be, because...

Q. 77, 12.
I 

CHRIS, A kind of defensive coat worn by horsemen in war, not made of fossil iron, but many plates fatten together, which fome by tenure were bound to find upon any invasion. See Dudgeon. Wulflingham, in the Life of Richard II. fol. 239. tells us, Acceptab e ver ejusdem fablus Philipus quod mille hieras vel taurus, una quinque iugum, redemerit de manibus creditorum. And in pag. 249. Acceptab quodam vigilimentum pretia- tum duobus Londonijs, quae jacte vocavit. —It was called hircia, because at frift it was made with leather. Cowell, edit. 1727.

Jutibus, (Lat.) Signifies him that felfeth by default; quod placcitum fem neglegentis, & jutibus cede remane- fi. Formul. Selen. 159.

Jamaica. See Plantations.

Jamaicawood, (mentioned 15 Car. 2. cap. 5.) Is a kind of speckled wood, of which are made cabinets, called there grubbil. The tree (as they fay) is low and small, feldom bigger than a man's leg.

Jambret, Armour for the legs; from jambe, idia. Cowell, edit. 1727.

Jampurum, Furf or gore; also a gorey ground, Ce. x part. 175. A word much ufed in fine, and the name femes to derive itself from the French jaumer, i. e. yellow, because the bloffoms of it are of that colour. Ce. en Lit. p. 5. fays jampurn, signifies a wetherplace. Manwood, in his ForL-Law, cap. 25. num. 3. fays, No man may cut down furze or whifs within the forêt without good licence.


Jaques, A fort of small money ufed formerly here, and mentioned by Stanfurd, in his Pifs of the Crews, cap. 20. Jac. (Span. Jârre, i. e. an earthen pot) With us it is taken for an earthen pot or vefiel of oil, containing twenty gallons.

Jarrock, (mentioned in Stat. 1 R. 3. c. 8.) Is a kind of cork, or other ingredient, which this statute prohibits dyes to use in dyeing cloth.

Junn, (Fr. Jaune, i. e. yellow colour.) Preterea concedi abbati & conu. & hominibus curum de Stannal de fte de bardeus fii colliure jaum & feugere & Sæna & genetam per terram jannum fine impedimenti, & Ch. Charta Will. de Baye, fine dat. Doubtles here jaum is ufed for furze or gore, which we now in law Latin call jampurn, and anciently jumnum; &c. Donation ilias jaum in Dun- sked. Pl. Attff. 22 H. 3. Cowell, edit. 1727.


Jreni, Saffif, Jaff, Jaffi, Cambridge, and Huntingdon.

Sch dien, Is the motto of the Arms of the Prince of pair; from the Germ. ich dien, i. e. I serve. It was formerly the motto of the King of Bohemia, who was slain in the battle of Gruffy by Edward the Black Prince, and taken up by him to shew his devotion to his father, King Edward III.

Jōna, (Jonica.) A figure, image or representation of a thing. 'Tis mentioned in Matt. Parif. pag. 140, 491. in Hevelon, p. 670. and in Brampton, pag. 1178.

Juwex, Juwes, Juwex. A bruife, a swelling, any hurt or maim without breaking the skin, which they call properly fura, a wound, and apertus plagus, an open wound. —S inveniatur plaga apertura, vel brevifirum for fura orbis. Broden. lib. 2. traft. 2. c. 5. f. 7. So urzes was ufed for a black and blue foot, or livid mark of beating- Ligna fuitum brevisari, orbis, & illus, qui julicari non pavemento plagam, ib. cap. 24. fol. 2. So illus eoci opere in eoci cruentare et eoci apparet. As in the laws of H. 1. c. 94. —S ilius alius urzes, ret certis illibus & non equitatis, quatuor orbis ibi fit, vel non contrectus, vacuo vitam endematur deminis, iujus ba- minum vobravtis. Cowell, edit. 1727.

Jurentiae nominis, Is a writ that lies for him, who upon a capias or certior committit and promised to pri- son for another man of the fame name; in fuch cafe he may have this writ directed to the fhiriff, which is in nature of a com mission to inquire, whether he be the fame perfon against whom the action was brought; and if not, then to discharge him. Reg. Org. 194. F. N. B. 267.

Stat. 37 Ed. 3. cap. 2. For the mischifes which happen of that the escapators, fhiriffs and other minifers, feize the lands and goods of many, furnifying that they be outlawed, because they bear fuch names as thofes which are outbreaked, it is declared, that if any complain of him in fuch cafe, he fhall have a writ of Identitatis nominis, as hath been ufed; and if any man's lands or goods be feized in fuch cafe, he fhall find furety before the minifer which hath the warrant to feize, to anfwer to the King of the value of fuch lands or goods, in cafe that he cannot pay fuch furety, without taking any thing of the party; and if fuch minifer do not the fame, and thereof be attained, the party fhall recover towards the double damages, and he fhall be grievously amerced towards the King.

Stat. 9 Hen. 6. cap. 4. A writ of Identitatis nominis may be maintained or any. or any tellew as well as for any perfon himfelf.

Execution infixed for damages recovered againft the bailiff of A. by the name of J. S. of D. and there was J. S. the father and J. S. the fon, and the father being dead the fon fixed this writ, and prayed to have a superfederat; and Warner in J. S. demanded of Bifhulmo if he had any pre- ceed to award a superfederat in fuch cafe, which Bifhulmo refus'd No; wherefore he and Husen J. being only proficient, fay they would advise. Winch 6. Pach. 19. Jcr. Earl of Northumberland v. Earl of Devon. Con. fac. 623. C. C. by the name of Stabs v. Cook; and upon furmise that the fuit was againft J. F. the elder, and execution being fueld, the fhiriff had endeavoured to levy the damages, &c. upon the goods of J. S. they ounger, who fixed this writ to be difcharged; and the writ was allowed, tho' after verdict, judgment, and execution awarded. Hutt. 45. S. C. by the name of Wifon v. Stabb, and that upon the directing the right hand of J. S. to an fhiriff upon the identitatis nominis, the question was, if the superfederat lies thereupon, it being only a furmise and matter in fact, and lies more properly, and more frequently, for preventing an arreft upon outlawry, and after the party is taken upon the vveal of ftatute, is a thing not frequent in ufe, and is in nature of an end, good for the goods, and that finding furety to pay the debt it found that he be not another perfon; and the court inclined strongly, that it is no superfederat, but much in the difcretion of the court, cites Lib. Infrar. and Sec. Ed. 3. 51. 52 & 53. Hen. 320. S. C. and the parties before cited) were produced, yet the court was of opinion that the writ in the personal caufe, and the superfederat thereupon, was not war- ranted, but the defendant, being named J. S. the younger, might have action of false imprifonment. —Shea.
cause the defendant, being named J. S. without addition, 1
therefore 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 act. in the Identify

minis, and plead, and go to trial, and if the defendant in the former action was bound to give bond for the
former action, then the defendant in the latter action
shall give bond for the former action, with the security
to be delivered to the new defendant, or of otherwise, then to the
new plaintiff. Sec. 12 N. Acr. tit. Identify, minis.

I. E. of Greece word pro-

perly signifying a private man, who has no publick office.
Among the Latins it is taken for licentii, imperii, and
in our law for non contemptui, or non naturali, or a natural foul.
The words of the statute 17 Ed. 2, c. 9, are Rex habet et
fidelium terram fatum non naturalium, whereby it appears
he must be a natural foul, that is, a fool a naturativus:
for if he was once wife, or become a fool by chance or
misfortune, the King shall not have the custody of him.
Stannul. Prerog. cap. 9. 3 F. N. B. leg. 231. If one
have understanding to measure a yard of cloth, number twenty,
rightly name the days of the week, or to beget a
child, he shall not be counted an idiot or natural foul,
Cowell, edit. 1727.

But the general description of a person, who, from
his want of reason and understanding, comes within
the protection of the law, is that of non contumens. Co.
Lit. 240. 4 Co. 124. Sin. 177.

There are, says my Lord Cole, four kinds of men
who may be said to be non contumens. 1. An idiot, who is
non cooper from his nature. 2. One made fuch by fick-

nefs. 3. Lunatick, qui alignatur gaudet lucidi interlocuti,
who is non contumens only for the time that he wants un-
derstanding. 4. One that is drunk; which left is far
from coming within the protection of the law, that his
drankenpf is an aggravation of whatever he does amifs.
Co. Lit. 247. 4 Co. 124. See 1 Hale Hig. P. C. 30

1. An idiot is a fool or madman from his nativity,
and one who never has any lucid intervals; therefore
the King has the protection of him and his effate,
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 by jury or infention. Dryr. 25. Mer 4. pl. 11.


But tho’ an idiot must be so a naturativus, yet if by
infention it be found, that A. is an idiot not having any
lucid intervals per fpectrum alto occurring, this is a suf-
ficent finding; for the infention having found the party
an idiot, the adding fipectrum alto occurring is surplusage,
and shall be rejected. 3 Mod. 43. 44. Sin. 177.
Stom. 5. 175. S. C. Pedeney and Lady Frazier.

2. One made such by fickness, which my Lord Hale
calls Dementia accidentalis vel adventitious, and which he
again distinguishes into a total and a partial impatient,
from its being more or less violent, is such a madman as
executed an accidental criminal; and the party also is in
every thing else be intitled to the fame protection with an
idiot; and tho’ his disorder seems permanent and fixed,
yet as he had once reason and understanding, and as the
law fees no impossibility but what he may be reforted to
them again, it makes the King only a truftee for the
benefit of the party, for the good of the state, without giving any profit or interest in his effate. 1 Hale Hig. P. C. 30.

3. A lunatick; this is also Dementia accidentalis vel
adventitious, and takes its name from the great influence
which the moon has in all disorders of the brain; and tho’ such a one hath intervals of reason, yet during
his madnes may be said to have the same indulgence as to his
247; and stands in the same degree with one whole disorder
is fixed and permanent. 4 Co. 125. 3 Hale Hig. P. C. 31.

4. One made mad by drunkennes, which is called
Dementia effusiva; and tho’, as has been said, such
a person be not intitled to the protection of the law, yet if
a person by the wilful drink of his physician, or by the
contrivance of his enemies, eat or drink such a thing as
caused phrenzy, this puts him in the same condition
with any other phreny, as much as to furnish him; also if by
one or more such practises an habitual or fixed phreny
be caufed, tho’ this madness was contrived by the vice
and will of the party, yet this habitual and fixed phreny
thereby ceafed puts the man in the same condition,
as if the same was so tricked involuntarily at first. Plac.
Hig. 1737. Geo. Tylcffe 29a. Co. Lit. 247. 1 Hale Hig.
P. C. 32.

But tho’ this subject of madmen may be spun out to
a greater length, and branched into several kinds and
degrees, yet it appears that the prevailing diſfuiclion herein
in law is between decency and lunacy; the first a fatuity a
naturativus, vel dementia naturalis, which excetteth the
government to his acts, and intitles the King to the
receipt of the rents and profits of his eflate during his life,
without being obliged to render any account for the
same; the other accidental or adventitious madness, which,
whether permanent and fixed, or with lucid intervals, goes
down as to the fum of lunacy, and is not accounted with
idiocy, as to acts done during the phreny; but herein
they differ, that in the latter case the King, as has been
told, is only a truftee for the lunatick, and accountable
to him, if he happen to be reforted to his understanding,
or to his representatives, if it has, per otherwise. 3 Sec.
Acr. 80. 4 Co. 125. a.

1. How idiots and lunaticks are to be found fuch.
1. Who had an interest in, and jurifdiction over them;
and of appointing them proper curators and committees, and
the power and duty of such committees.

2. How for the want of understanding fuch shall be faid
to prejudice them in civil and criminal eafes.

3. How for their acts are good, void, or voidable; and
how they are to sue or defend.

4. How idiots and lunaticks are to be found fuch.

Every perfon of the age of discretion is in law pre-
fumed to be of found mind and memory, unless the con-
trary appear; and this rule holds as well in civil as
criminal eafes. 1 Hale Hig. P. C. 32.

The quality of lunacy, madness or lunacy in civil eafes,
and in order to the commitment or eylate of the per-
son and his eflate, which belongs to the King, either
to his own use and benefit, as in case of idiocy, or to the
use of the party, in case of accidental madmen or lu-
acy, is by writ or commission to the sheriff or eolicetor,
or particular commissaries both by their own order and
by infention to inquire, and return their infcription into
the Chancery; and thereupon a grant or commitment of
the party and his eflate ensues: And in case the party
or his friends find themfelves injured by the finding
him a lunatick or idiot, a special writ may lie to
bring the party before the Chancellor, or before the
King. In Council, to be judged and if, on examination, it ap-
ppear the party is no idiot, the whole commifion and
office shall be discharged without any traverse or mon-
franf de droit. 9 Co. 31. a. 4 Co. 126. And for this
writ of Idita inquireris, see Fin. N. B. 292. 3.

Also the party found an idiot or lunatick, may traverse
the infcription, as may any other perfon having a title to
the land, and therefore it is said, that by the statute 13
Hen. 6. there ought to be a month’s time between the
return of the infcription and the grant of the eylate and
lands, in order for the parties to come in and tender
such traverse. Sin. 176.

If a lunatick or a perfon be found a lunatick, and the
custody granted to T. S. and the party thus found bring a faire facias to set aside the infcription, the
committee of the lunatick cannot plead nor join sliie in
fauch faire facias; for he can have no interest in the


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effect of the lunatick, being only in the nature of a bai-
liﬁf to the King, and therefore his duty is to inform the
King's Attorney General of the nature of the affair,
who is the proper person to contest the matter in behalf of
the King. 2 Sid. 124. Sufan Thor v. Cawards.
As to idoeocy, lunacy or madness, which excusses in
capital cases, it is not necessary that it was found by in-
quillition that the party was a madman, idiot, lunatick
and that he be actually mad, for if he was not
actually mad at the time of the fact committed, this
shall excuse; and this regularly is to be tried by an inquest
of offiﬁce to be returned by the sheriff of the county
wherein the court ﬁles for the trial of the ofﬁence; and if it
be found that he was not mad, he shall be de-
liberated from any other trial; but if they shall ﬁnd that
the party only feigns himself mad, and he refuses to an-
swer or plead, he shall be dealt with as one who stands
mute. 26 A. ﬂ. pl. 27. Bro. Cre. 101. 1 And. 107,
P. C. 25.
1. Also in a case a man in a frenzy happen by some over-
fright, or by means of the gaoler, to plead to his indict-
ment, and is put upon his trial, and it appears to the
court upon his trial that he is mad, the judge in dere-
ction may discharge the jury of him, and remit him to
god speed. If after a bare hearing or appearance especially
in cases of any doubt upon the evidence touching
the guilt of the fact, and this in favorem vitae
and if there be no colour of evidence to prove him guil-
ty, or if there be a pregant evidence to prove his in-
timacy at the time of the fact committed, then, up-
standing in favour of life and liberty, it is in law it should
be proceeded in the trial, in order to his acquittal and
2. Who hath an interest in, and jurisdiction over them;
and of appointing them proper curators and committees
and the power and duty of such committees.
It seems to be agreed at this day, that the King as
pars patriae hath the protection of all his subiects, and
that in a more particular manner has the special	
protection of those who, by reason of their imbecility and want of
understanding, are incapable of taking care of them-
theselves; this, in some books, is called a prerogative in the
crown, and in others a regius munus, or duty which the
King owes to his subjects in relation to their subjicet Written
and all the other matters of his understanding, it is in law it should
be proceeded in the trial, in order to his acquittal and
My Lord Coke in his 2 Int. is of opinion, that by
the Common law the King had no prerogative in the
custody of an idiot’s lands, but that the same belonged to
the lords of whom the lands were held, and that
the fame was given to the King by some act of parlia-
ment after the making of Magna Charta, and before the
statute De prærogativa Regis 17 Ed. 1. cap. 9.
In 3 Cr. Bevans’s case, he says, that this prerogative was by
the Common law, and that the statute De prærogativa Regis
is only declaratory thereof. 2 Int. 14. 4 Co. 126. a. Dyer 25.
But however that may be, now, by the statute
De prærogativa Regis, 26 Ed. 2. cap. 9, it is enacted,
that the King shall have the custody of the lands of nat-
ural fools, taking the proﬁts of them, without waste or
defraution, and shall ﬁnd them their necessaries, of
whole fees over the lands be holden; and after the death of such
idos, he shall render it to the right heirs, so that such
Ides shall not alien, nor their heirs shall be disseised.
And cap. 10 of the said statute, “The King shall
provide when any (that before that time had his will and
memory) happen to fail of his will, and there are many
perils between, that their lands and tenements shall
be safely kept without waste or destrution, and that
Vol. II. No. 97.
they and their household shall live and be maintained com-
petently with the proﬁts of the same, and the residue, be-
coming to the King immediately, that be kept to their use, to be
delivered unto them when they come to mature years, if such
lands and tenements shall in no wise be aliened, and the
King shall take nothing to his own use; and if the
party die in such estate, then the residue shall be dis-
tributed for his soul, by the advice of the ordinary.”
This distribution, established by this statute, between the
King’s interest in the lands of the lunatick, is laid down and admitted in all the books which
speak of this matter; and on this foundation it hath been
reolved, that the King may grant the custody of an
idiot’s lands to a persons his heir and executors, and
that he may not take the same interest from one as he had in
his ward by the Common law. 3 Bro. Lib. 6. Dyer
25. Mor. 4. pl. 12. 1 And. 23. 4 Co. 127. C.
Lit. 247.
But though a lunatick is by commitment to be he-
care of the publick, and such committee is to be
appointed for him by the Lord Chancellor, whose acts
are subject to the control and correction of the court
of Chancery; yet such a one, wether so appointed, or
whether he of his own hand take upon him the care and
management of the estate of a lunatick, is but in nature
such a trustee or trustee for him, and accountable to him,
his executors or administrators. 4 Co. 127. 2
Ch. Lib. 239.
And as the committees of a lunatick have no interest,
but an estate during pleasure, it has been ruled, that they
cannot make leases, nor any ways incumber the
lunatick’s estate; without a special order from the court of
Chancery, where the proﬁts and estates are directed to
maintain the lunatick. 1 Vern. 262. Fryer v. Merchant.
Alfo where a lunatick, before he became such, made
a mortgage of good part of his estate for 50 l. and the
the committee transferred this mortgage, and took up 3
400 l. more upon it; and it was held by my Lord
Keppel, that this mortgage was good, and a security
for the 50 l. only. 1 Vern. 262, 263.
And though the King, as 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 cir-
cumstances. 2 Rol. Lib. 54.
And alfo by the 12 Ann. cap. 23, reciting, that
whereas there are sometimet in parishes, towns and places,
persons of little or no estate, who by lunacy, or other-
wise, are furiously mad, and dangerous to be permitted
to go abroad, and by the laws in being the juflices of peace and others have not authority or
right to restrain and confine them, it is enacted, “That it shall not
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, church-
wardens and overseers of the poor of such parish or
place, or some of them, to cause such person to be pre-
rephrased and kept safely locked up in such place
within in 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 per-
son shall be in any parish, town or place within 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 performing, out of the 
more or less, of such person, if such person hath an
estate to pay and satisfy the same, or out of the
amount (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 out of the
amount, (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,
ways and means as the poor of such parishes, 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 restrain or abridge the prerogative of the Queen, or the power or authority of the Lord Chancellor, Lord Keeper, or Commissioners of the Great seal, or to the time being, or to the Vice-Chancellor of the Court of Chancery, of the Court 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 estate of underrighting shall be said to prejudice them in civil and criminal cases.

Civil cases. An idiot, or person non campus, may inherit, because the law, in compolation of their natural infirmities, presumes them capable of property. Co. Lit. 2. 21 P.C. 203.

Also an idiot, or person of non-fane memory, may purchase, because it is intended for their benefit; and if after recovery of their memory they agree thereto, they cannot avoid it; but if they die during their lunacy, their heirs may avoid it, for they shall not be subject to the compulsion of reform; and want capacity to contract; so if after their memory recovered, the lunatick, or person non campus, die without agreement to the purchase, their heirs may avoid it. Co. Lit. 2. 21 P.C. 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 defend to an idiot or lunatick after marriage, and the King, on occasion, finds, take those lands into his custody, or grants them over to another, as committee, in the usual manner, yet the King has no right in the lands, should he 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 Pleas. 203 b. 1 He. Co. 7.

A lunatick shall be tenant by the curtesy, and shall have dower, so that a woman, being a lunatick, kill her husband, or any other, yet shall be endowed, because this cannot be felony in her, who was deprived of her underfranding by the act of God. Perk. 365.

If a person non campus be divorced, and a defect cann, this is a fault, takes away his entry, but not the entry of the heir; for regularly the non campus in this case cannot allege the disability in himself, because he cannot be suppos ed concur 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 capacity, unless 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 restored to his right, and to his capacity of ability. Lit. 405. 247 Co. Lit. 61.

And the act, being a violation of a copulative manor, may make grants of copulative estates, for such estates do not take their perfection from any power or interest in the lord, but from the suffum of the manor, by which they have been demised and demisable time out of mind, 4 Co. 23 b. Co. Copyhold 75, 107.

The acts of lunatics are both by the Civil law, and likewise by the Common law, incapable of being executors or administrators; for these disabilities render them not only incapable of executing the trust reposed in them, but also by their infirmity, and want of underfranding, they are incapable of determining whether they will take upon themselves the execution of the trust or not. Godfr. Opin. 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 another. 1 Saunt. 36.

An idiot, or person non campus, being robbed, shall be bound by a lack of his goods in a market court. 2 Hals. 713.

Criminal cases. It is laid down as a general rule, that idiots and lunatics, being by reason of their natural dis abilities incapable of judging between good and evil, are incapable of any criminal prosecution whatsoever. 1 Hals. P.C. 142.

And therefore a person, who offends his memory by sickness, infirmity, or accident, and kills himself, is not de fe de f. 3 Hals. 54.

So if a man give himself a mortal stroke while he is insane, and recovers his underfranding, and then dies, he shall be held in de facto for tho' the death was occasioned by the homicide, the act must be that which makes the offence, 1 Hale Hals. P.C. 412.

But it is not every melancholy or hypochondrical dif témper that denominates 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 frantick, or delirious of the use of reason. 1 Hale Hals. P.C. 412.

And as a person non campus cannot be a felo de fe 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, and becomes non campus by conviction, he shall not be arraigned; and if after conviction, he shall not be executed. 1 Hale Hals. P.C. 39. 1 Hals. P.C. 2.

It seems to have been always held, 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 treasonable killing, or offering to kill the King; but this is now contradicted by better and later opinions. Finch, Caron, 351. Regis. 209. 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 faculties, as not to have any of his actions imputed to 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 this is to define the indivisible line that divides perfect and partial infirmity, yet say he, it must rest upon circumstances, only to be weighed and considered both by the judge and jury, left on the one side there be a kind of insubstantial towards the defects of human na ture, or on the other side too great an indulgence given to great crimes; and the best measure he can think of, to avoid this, is such a perfom, as labouring under melancholy, infirmities, 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 Hals. P.C. 32.

It hath been already observed, that he who is guilty of any crime whatsoever that his voluntary drunkenness, shall be punished for as much as if he had been sober, Vide supra.

Also he 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. Pich. 53. Dall. 261, 262. Co. Lit. 247.

And here we must observe a difference the law makes between civil suits that are terminated in compromissorum damnii illiati, and criminal suits, or prosecutions, that are ad personam & in vindicetim criminis commissi; and therefore it is clearly agreed, that if one who wants discretion committed to a madman, and the acts of the person or persons so committed be shall be compelled in a civil action to give satisfaction for the damage. 2 Roll. Ab. 547. Hals. 134. Co. Lit. 247. 1 Hals. P.C. 2. 1 Hals. Hals. 15, 16, 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 lunatics in pairs, and in a court of record; that as to these Schelms acknowledged in a court of record, as acts
fines and recoveries, and the ules declared on them. They are good, and can neither be avoided by themselves nor the bill charged; for they are under the law, and the bill charged, that had they been under those disabilities, the judges would not have admitted them to make those acknowledgments.

If a person non compos acknowledges a fine, it shall stand against him and his heirs; for the judges can admit a fine from a madman under that disability, yet when it is once received, it shall never be recoverable, because the record and judgment of the court being the highest evidence that can be, the law presumes the conizzer at that time capable of contracting; and therefore the credit of it is not to be controlled, nor the record, unless it be for a fraud upon the estate.

So in case of a fine levied by an idiot, it shall stand against him and his heirs; for no avowment of idiocy can vacate the fine; nor will an officer, finding him an idiot, a niatrity, be sufficient to relieve the fine, for that were to lessen the credit of judgments in courts of record, by trying them by other rules than themselves.

As to acts done by them in pari, they are distinguished into two kinds, viz. (a) those to themselves and their executors, which they can only do at law, through the medium of others; and (b) acts to others, which they can do in equity, and are the same in effect as if they had done them for themselves, because the decision of the court is the same. And if an idiot or lunatic enter into recognizance, or acknowledge a statute, neither they themselves, nor their heirs nor executors can avoid it; for these are securities of a higher nature than specialties and obligations, which yet they themselves cannot avoid, and being matters of record, and equivalent to judgment of the superior courts, neither they themselves, their heirs nor executors, can avoid them.

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But every person making a will is presumed to be of sound under standings, until the contrary is proved; so that the usu fronds lies on the other side. If the testator used to have fits and lucid intervals, and it cannot appear whether the will was made in the lucid intervals, if there be no other competent witness to the will, tho' the testator had no lucid intervals, yet if it can be proved that he was mad at the time of making the will, if the will be a feeble orderly will, but the least word of folly in such a will will overthrow it: On the other hand, if one be a very idiot and make a good feble will, yet the will shall not be good. Stain. 71. Gadalphi. Orph. Leg. 25.

If a peron makes a will, and afterwards becomes non compos, it shall be void, and the property of the will shall revert to the testator.

By the flat. 4. Co. 2. etp. 10. it is created, "That it shall and may be lawful to and for any person or persons being idiot, lunatic or non compos mentis, or for the committee or committees of such person or persons, in his, her or their name or names, by the direction of the Lord Chancellor of Great Britain, or the Lord Keeper, or Commissioners of the Great Seal for the time being, by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such person or persons being idiot, lunatic or non compos mentis, shall be set free of all the monies of the mortgagor or mortgagee, or of the person or persons intituled to the monies secured by or upon any lands, tenements or hereditaments, whereof such person or persons being idiot, lunatic or non compos mentis, is or are, shall be free and unfreighted in mortgaging, or of the power of persons intituled to the monies so secured, to convey and affume any such lands, tenements or hereditaments in such manner as the Lord Chancellor, or the said per. or persons so to be set free to direct any other person or persons, such conveyance or affumere to be in due and lawful manner, such shall be good and effectual in law, to all intents and purposes of the case, as if the said person or persons being idiot, lunatic or non compos mentis, was or were at the time of such conveyance or assumption of same mind, memory and understanding.
New Terms of Law Justice. That a jeffal 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 the pleading or issue is fraudulently joined or tried, that it will be error if they proceed: then some of the said parties may, by their counsel, move it to the court as an error and before the cause is continued to the trial, but the jury be charged; the finding of which defects, before the jury charged, was often, when the jury came into court to try the issue; then the counsel which will flew it, shall fly. This impeach you ought not to take; and if it should be after verdict, then he may fly. To judgment you ought to come at the issue, as you have given of this many cases to be tried, for the refusal of which divers futes were made, viz. 

32 Hen. 8. 30. be unrementioned, and others in Queen Elizabeth and King James's days, viz. 15 Eliz. 14. 12 Jac. 13. 1699. See Amendment.

It is to be seen that there is, a branch, or large candelabrum of bras brought into several counties, and hanging down in the middle of a church or choir, to spread the light to all parts. This invention was first called Aber-jeffe and Stirps-jeffe, from the similitude to the branch or geological tree of Jesse. This useful ornament of churches was first brought over into England, by Archb. of Ely, abbot of St. Augustine, in Canterbury, about the year 1150. as thus recorded by the historian of that abbey: Polpium eiam in ecclesia feis, candelabrum eiam magnum in thoro eadem, quam jeofail, etc., in partibus eum tradui marum. Cowen. Will. Thorne p. 1796.

Boeth. Retton, and Jefim; (from the French potters officers.) Is any thing thrown out of a fhop, being in the danger of work, and by the waves driven to the shore. See Jefin, and No. 5. fol. 16.

Jews, (judas,) Here in England, in former times, the Jews and all the egoons belonged to the chief lord where they lived; and he had such an absolute property in such men that he had liberty to remove to another lord without leave. This appears in Matt. Par. pag. 311. 1060. where we read that Hen. 3. fold the Jews to Earl Richard his brother for a certain term of years, that pass Rex exoneratus, comes eueravor. They were distinguished from the Christians both living and dying; for they had proper judges and courts, where their caufes were decided; and they wore a badge on their outward garments upon the breast in the fhape of a table, and were fined if they went abroad without such badge. They were never buried in the country, but brought up to London, and there buried. But the body and hat might be buried without the walls of any other citie. And anciently we had a court of the juftices alligned for the government of the Jews. See 4 Jef. fto. 254. Rev. v. Wiger. Jafum. Preceptum nndi quid emans

et efferentia for usum baliomini eum, quod eum
judea difcere in inferioribus infantibus, uidc que trini
verum eique cathoicaus inferius vel eque de
cps et tibi; qui fuerit sevrus dextra 

Judea: et Christianus aberreret.

See 5. Jef. 1. cap. 12. in the Statute of the Pillory, directis, among other things, That the jurzy therein mentioned shall impaire if any buy fith of Jewes, and then fell it to Christians. In 9 Ed. 1. A Jew had his trial for mediotione lingum, viz. Judiecm, and they were sworn on the five books of Mijas, held in their arm (bracis) and by the name of the God of ftreke that shall stand. D. 14. fto. 59. marg. cite 9 Ed. 1. flt. 13 Ed. 1. Stat. 3. cap. 1. called the Statute of Ambages, is directed to extend to all except Jews. A Jew born in England pacheted land, and married a Jewes; he is converted to Christianity, but the is not converted, and the wife have dowry, before the time of Ed. 1. and Partum. Roll. 9. 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 Jef. 89. and in the

J. L. O

understanding, and not abd, lultick of new compa

ments, or to the king, her or themselves executed the

laws; any law, &c.

And it is further enacted, That all and every fact per

son and persons, being ident, &c., and only truth or tru,

tees, mortgages or mortgages as afoead, or the com

mittee or committees of all and every fact person

and persons, being ident, &c., and only truth or tru,

tees, mortgages or mortgages as afoead, shall and may

be impowered and compelled, by such order so as afoe

fald, to be obtained, to make such conveyance or con

veyances, affurances or assurances, as afoead, in like

manner as trustees or mortgagees of face money is com

pable to examine, tenderer or allign their truth

cificate or mortgages.

When an idot doe fie or defend he shall not appear

by guardian, prochein army or attorney, but he must be


The statute of Wt. 2. cap. 15. extends not to an idot,

2 Jef. 390.

But otherwise of him who becomes now compa mens: for

he shall appear by guardian if within age, or by at

torney if of full age. 4 Co. 124. b. Palm. 520. &

vid. 2 Sawa. 335.

If a trufafs be committed in the lands of a luntuick

who is legally committed, the committee cannot bring

an action of trufafs, but this must be brought in the

name of the lunutick. 2 Sid. 125.

If a trufafs be sued, he must have a committee af

figned to him to defend the suit. 1 Vern. 2. 160.

For more learning in this subject, see 3 Bac. Atr. tit.

Idads and Lunticks. See Lunticks.
A Jew brought an action, and the defendant pleaded that the plaintiff is a Jew, and that all Jews are preju-
dicial enemies regni & religionis; judgment is action. But per
ew. A Jew may recover as well as a villain, and the plea is but in differ-
city so long as the King shall prohibit the same by a peace or a
Characters (he for void the inquisition of causes criminal and
publick, and written upon the bill, when they may
like their evidence as defective, or too weak, to make
the best pretense; the effect of which words so writ
is, that all other inquiry upon that party for that
fact is there by stopped, and he delivered without further an-
swer. It has a resemblance of that ancient custom of the
Romans, where the judges, when they supposed a
peron accused, did write A. upon a little table provided
for that purpose, i.e. absolverant; if they judged him
guilty, they wrote C. id est, condemnamus: if they found the
case distinct and doubtful, they wrote N. L. that is non
litigat.

Ignorant. (Ignorantia) Which is want of knowl-
dge 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 the law of the realm; and ignorance of it,
though it be involuntary, where a man affirms that
he hath done all that in him lies, shall not excuse him.
But though ignorance of the law excueth not, igno-
rance of the fact doth; as if a person buy a horre or
other thing in open market, of one that had no property
therein, and not knowing but he had right; in that
case he had no title, and the ignorance shall excuse him.
But if the party bought the thing for nothing in the
market, or knew the seller had no right, the buying in an
open market would not have excused. Dedit. and Stud. 5
Rep. 83.

Ignatius. See Parliaments.

Illum. (Illuminating) Is one of the four famous ways
that the Romans made in England, called Stratums lucernarum
because it took beginning in Lucania, which were the
people that inhabited Norfolk, Suffolk and Cambridgehire.

Illict-Streets. Is one of the four famous ways that
the Romans made in England, called Strandum lucernarum
because it took beginning in Lucania, which were the
people that inhabited Norfolk, Suffolk and Cambridgehire.

Illicit. See Parliaments.

Ilium. That may or can not be levied, and there-
fore mild is a word fet upon a debt allowable. Id. ib.

Illicit. If any man illiterate or not lettered,
and I deliver a writing, which is in contrary to
that which is acknowledged in the deed; it is a
good deed. 9 H. 6. 50. b. 10 Hen. 6. 6. 10. 2 Rep. 9.
But if I can read, such a false reading will be not
relied for, it is in my own folly. 2 Sm. 139.

Illucic. If any one to release 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.
47 Ed. 3. 3. 17.

If agreement to release all trespasses, and in the deed
is a put a release of land, and this is delivered by a man not
lettered, as a release only of trespass, this deed is void.
45 Ed. 3. 2. 44. 44 af. 30.

So where there is not any agreement to make any rele-
sa, but a man comes to another not lettered, and
prays him to a deed, faying, that it shall be no pre-
judice to him, and he seizes it without hearing it; the
deed is a good deed, because he did not pray to hear it.
44 af. 30. 44 Ed. 3. 23. Dubitation.

If a man for great age cannot see to read, and seals an
obligation upon false reading, he shall avoid it. 3 H. 0.
52. B. Mich. 9 79. in the star-chamber, Slater's cafe,
cited 1 Rep. 280. Revised, though he was lettered; for
now he has a device, and the reading is not legible.

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
trust, with a letter of attorney, where it is a fonction in
law, it is good and effectual because it is in the let-
ter of attorney; for all is but one deed, and by the up-
very seconndum formam chartae, nothing makes, the deed
being void. 3 Ed. 3. 31. b. Curia.

Sff
If an obligation be read to a man illiterate, that he binds himself by it in 
all. 3 Ed. 3. 
now letter'd will make a feuility, and upon 
any parchment, &c. two feuilities are contained, and 
only one is read to him, yet the deed, for this feuility which 
is read to him, is good. 3 Ed. 3. 37.
If three distinct obligations are written upon one piece 
of parchment, and one of them only is read to the obliger, 
and he being a man not letter'd, seals and delivers the deed, 
this is good for that which was read, and void for the 
others. 11 R. 27, p. Pigges's cafe.
Illustrate. To illustrate, to draw in gold and co 
lores the initial letters, and the ornamental pictures in 
manuscripts, &c. See also Illegible, Illustration, 
Illegere non sufflilam. Brompton, fub anno 1576. Tho' persons who particularly practised this art, 
were called illustratores, whence our illuminators.
Images. How to be defined, 3 & 4 Ed. 6, c. 10.
Imbargo. A stop or stay, most commonly upon ships 
by public authority. 18 Car. 2, cap. 5. See Merchants, 
Ipswich.
Imbiteit, or Imbeil. To wage, scatter and confound; 
as if a person intruded with goods, wags and diminish 
them, we say he hath imbested the goods. 14 Car. 2. 
c. 31. See Felony, Stories, Wool.
Imbecility. See also Imbecility.
Imbucus. A brook, a gut, a water-palmer. See 
Part of Parts and Parts, p. 43.
Imbicidy. See Chimney.
Impalpable, To put in the pound. Leg. Hor. 1, c. 9.
Immunities. See Pyraographic, London.
Impaule (Impaule). To impanel a jury, is to 
enter into a panelment schedule by the flourish, the 
names of the jury summoned to appear, for the performance 
of such public service as juries are employed in. A 
privilege was sometimes granted, that a person should not 
be impanelled, or returned upon a jury. The same 
impanelleur in algemine affinis, jurisdictu, recognitus, &c. 
Impartial. (Inter��ebr or interiqloua) Is a motion or 
petition made in court by the tenant or defendant, 
upon the count of the demandant, or declaration of the 
plaintiff, whereby he craves refpite, or a farther day to 
put in his answer. See Bract, tit. Continuance. Impar 
tance is general or special. Special is with this claue, 
Salutis omnium advantage, tam ad jurisdicitionem curae, 
quam ad brevem & narrationem. Kitchen, f. 200. General 
is that which is made at large, without inferring that, or 
the like claue. Cawood.
The declaration and before the defendant can be 
compelled to plead, many times there is an impari 
tance; 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 
refpite. And this femeth to be special or general; spe 
cial, as where this or the like claue is inserted, Saving 
all advantages, as well to the jurisdiction of the court, as 
to the writ and declaration; general, is confequently where 
that or the like claue is not contained. Reg. Placit. 55.
Formerly the defendant in all cases had an impari 
tance to the term next after the return of the proces, except 
the proceedings were by original, or for and against attorney 
ies or other privileged persons, or against plaintiffs in the 
tyranny of the marshal; in which cases the defendant 
was bound to plead, without any impari 
tance, and the same term the declaration was delivered, (if delivered four 
days before the end of the term) and except the proceed 
gments were by original, or for and against attorney 
est that the first return of Egner or Michaelmas term, and the 
action laid in London or Middlesex; and in which 
cases, if the declaration was delivered before the eftion 
day of Menj, Pafh. or fainemum animarum, the defendant 
was to plead within ten days of the eftion 
day of the folhe 
course, in the Philippa. Mich. 5 Ann. But now, by a rule made 
in Trinity term 5 & 6 Car. 2. upon all proces to be sued 
out of this court, returnable the fift or second return 
of any term, if the plaintiff declines in London or Middle 
sx, 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 fift days without impari 
tance; and in case the plaintiff declines 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 of the delivery, and the defendant 
shall plead within the fift eight days without any impari 
tance; 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 defen 
dant would be held to an impari 
tance. 1 At. Prat. in 
K. B. 148, 149.
The defendant may imparl if the plaintiff amenys his 
declaration; otherwise if he accepts of cops, for by such 
amicus it shall be accounted as a new declaration; 
but if the defendant accepts of cops for such amendment, 
now impars, it must be given for the impars by the 
amicus; and therefore it is reason he should 
plead to the declaration so amended, and not imparl. 2 L. P. R. 34, 35. cites Mich. 22 Car. 2, B. R.
If the plaintiff declines, but proceedeth no farther for 
three terms, defendant may imparl. 2 L. P. R. 35. 
cites Hill. 23 Car. 2. C. 3. 3.
If the court have proceeded to issue, and the defendant 
amends his plea, he shall pay the plaintiff's cops, but 
the court will not grant an impars; per Roll Ch. J. 
1655. For after issue joined, and warning given for 
a trial upon that issue, it is too late to imparl. 2 L. P. R. 
35.
The court would not grant the defendant an impars, 
that he was sued upon a bond of 28 years old, and 
could not see the bond; but bid him pray over it of, and 
plead; for the antiquity of the bond is no caufe of imp 
Where the plaintiff fues out a special original, the 
defendant cannot imparl, 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 confider of, and 
avise upon; but when the defendant is taken upon a 
special copy, there the declaration is mentioned in the 
writ itself; and the defendant sees what the caufe of 
action is, and may take a copy of it, and prepare his an 
swer ready against the term by the times that the rules 
are out. 2 L. P. R. 36.
Imparltance is to enable the party the better to in 
form himself upon the caufe of action, in order to his de 
A second imparlance was moved for in a gui warrant, 
and said to have been granted, in the cafe of the city 
of London, but the court denied it; for J. fryj, that by 
The court of the course, they were to have but the com 
rains; and so the court said, that being ex 
gratis, they may grant or deny it as they please. Comb. 
12. Ill. 3 & 2 fam. 2, Ann.
One pleaded a foreign plea after imparlance, which 
could not be; but it was objected, not to be after imp 
parlance, because there was no entry of defectu sim 
& sequenti, and said to have been allowed in an homo replegiandi, or 
in affife, unless upon good caufe flown; because it is 
S. 3 Bileth. 35. Ann. 1856. See Pleading, 
and 14 Vic. Abr. tit. Imparltance.
Imparltances are allowed in general actions of trespass, 
but not in a special clianum frugi. 3 Saltb. 188. Hill. 9 W. 3. 3 Eliz. v. Thomar.
The defendant may imparl in an homine replegiandi, 
or in affife, unless upon good caufe flown; because it is 
S. 3 Bileth. 35. Ann. 1856. See Pleading, 
and 14 Vic. Abr. tit. Imparltance.
Imparltance, is any imparlance, perpna imparlt 
Scatters, is he that is included, and in possession of a benefic 
vironment, which are called the imparlances, as 
and imparlance of a benefic appropriate unto them. 
Cawood, edit. 1797.
Imparltance, (from the Lat. inparltare,) Is the ac 
and accusation of a person for treason, or other 
crimes and misdemeanors. Any member of the house of 
commit
commonly do not implead any of one of their own body, but also any lord of parliament, &c. and thereupon articles are exhibited on the behalf of the common, and managers appointed to make good their charge and accusation; which being done in the proper judicature, forsooth the accused, and the same 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. 311. vol. 1. 676. No pardon under the Great seal can be pleaded to an impeachment by the common in parliament. 12 W. 1. c. 3.

Impeachment of Waite, (Impeacitio volit, from the French impeachment, i. impeachment) Signifies a referral from committing of waifte upon lands and tenements; and therefore he that hath a lease without impeachment of waifte, hath by that a property or interest given him in the houses and trees, and may make waifte, in them without being impeached for it, that is, without being questioned, or demanded any recompence for the waife done. See Ca. tit. 11. Brouls's cafe, fol. 82. See Waife.

Impeach, (French impecher, Latin impeach.) To impeach, to accuse and prosecute for tellow or treachery, &c. (Impetratio Reg. Navarre against impacachate ne more diti Caroli de Helifania. Hen. de Knighten, feb. anno 1256. Spenel and Sumpner tell us, that it is derived from the Lat. impecher, which is to accuse, or in jur. vetere, from whence impeach signifies an accusation, viz. fine impotitius volsi, is without impeaching or accusing him of waifte.

Impeachment. Expeditudin, impeacitio came, Dogs lated and disabled from doing mischief in the forset, and pur- lices of them, Omnes came infra foreslum flike fei impeacitio aut amputatio foefro artiff. Cowell, edit. 1727.

Impedias. A defendant, or deforciant. Cowell. edit. 1727.

Impeiments in law, Persons under impeiments are those within age, under coverture, non compus mentis, in prion, beyond fe, &c. who, by a faving in our laws, have time to claim, or to profect their right, after the impeiments removed, in cafe of fines levied, &c. 1 Ex. 5. cap. 7. 4 H. 7. cap. 24. See Limitation.

Impetacle, A fort very fine cloth. Cowell, edit. 1727.

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Impediments, impeached, Burqness & pif- catosi civilitas rati in London, fuper illegitima proprietas, &c. connatami effe ceram nobi & impeclitii. Pat. 1. p. 1. m. 15. intenius. Impetatio. Accussion or impeachment; As, fine impotitius volsi, or fine impotitius impier, i. e. without impeachment of waifte, the party shall not be questioned or impeached of his waifte.

Impeation, (Impeacitio.) An obtaining by requelt and prayer. It is used in our statutes for the pre-obtaining of benefits and church offices in England, from the court of Rome, which did belong to the gift and disposition of our Lord the King, and other lay patrons of this realm; the penalty whereof was the fame with prebendaries. 23 Ed. 1. See 38 Ed. 3. fol. 2. cap. 1.

Impeation. Signifies as much as impairing or pre-judging. For the words of the flature 23 Hen. S. c. 9. are, To the impeachment and diminution of their good name. Impedito, (from the Fr. plaidier,) To free, arbit or preface by couple of law. Impealments, (from the French word employer, to em-ploy or the Latin impelere, to fill up,) Is used for all things necessary for a trade, or furniture of a household: And in that feife you fhall often find the word used in wills, and conveyances of moveables. Cowell, edit. 1727.

Implication, Is the law doth imply something that is not declared between parties in their deeds and agreements: And when our law giveth any thing to a man, it giveth implicitly whatsoever is necessary for the execution thereof.

It is a general rule, that when an estate is to be raised by implication, it must be a necessary and inevitable im- plication, and such as the words can have no other


An implied intent must not, without clear expressio, alter the equitable general law. Arg. Hill. 28 & 29 Curt. 2. 1 Chan. Cafes 297. in the cafe of Ford Lord Gray v. Lady Gray et al.

An estate by implication was never thought of in a deed, nor in a will but in e loco necessitatis, 4 Mist. 1756. Mich. 4 W. 4 M. B. R. Davis v. Speed.

No implication shall be allowed against an express estate limited by express words. 1 Salt. 226. Hill. 5 W. 4 & M. B. R. Godright v. Cowroth.

An express estate shall not be enlarged by implication, but by express words it may. per Wright K. and 2 Ch. J. and 1. Mich. 1703. 2 Fern. 449. Bann- field v. Popham. See Till. Will.

Impollability. A thing impossible in law, is all one with a thing imposible in nature: And if any thing in a bond or deed be incapable to be done, such deed, &c. is void. 21 Cat. 1. B. R. Yet where the condition of a bond becomes incapable by the act of God, in such cafe it is held the obligor ought to do all in his power towards a performance; as when a man is bound to encoiff the oblige and his heirs, and the oblige dies, the obligor must encoiff his heirs. 22 Cat. 1709.

Impoll, (from the Lat. impone,) Signifieth 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 distinguished from custom, because custom is rather that profit the Prince makeath of wares shipped out; yet they are fre- quently confounded. Cowell, edit. 1727.

Impoll-mone, Money paid at lifting of foldiers: from the pronunciation in, and Fr. priff, paratus. Id. ib.

Impollabilitas, Is a word often mentioned in Matt. Paraf. and it signifies invaluable.

Impoll, A plea, impeachment; also the art of printing, and likewise a printing-house. Stat. 4 Car. 2. c. 23.

Impoll, Thohe who fide with, or take part with another, either in his defence or otherwise. 'Tis men- tioned in Matt. Wjflon, viz. Juramentum ex parte Regis Anglicum futes, et iniuriam fuitimul impeclitii, whereupon redemptionem fuitem redempti, pag. 282. So in another place, Omnes bonitus & impeclii Domini Ludwici, &c. So in Matt. Parr. pag. 177. Quod nos criminis impeclitii ejusdem Regis, &c.

Impollment, (Impollamentum,) Is the restraint of a man's liberty, either it be in the open field, or in the flocks, or cage in the streets, or in a man's own houfe, as well as in the common galo. And in all these places, the party so restrained is faid to be a prisoner, fo 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. G. 9 H. 3. c. 2. 25 Ed. 3. 2. 5. 4.

Bailiff accountant not having lands to be attached by their bodies, to render account. St. Markb. 52 H. 3. c. 2. 13.

Execution against the body on a statute merchant, St. de merci. 11 Ed. 11.

The creditor on a statute merchant to find his debtor in prion with bread and water, St. de merci. 11 Ed. 1. and to recover his cofts. Hill. 829.

See Falle Impollment. Balneas Cusps.

Impolluation, is properly so called, when a benefice ecclesiastical is in the hands of a layman; and appropria- tion when in the hands of a bishop, college or religious house, though sometimes they are confounded. It is said there are 38 benefices in the Church of England. Id. ib.

Impollment. See Appoiment.

Impuatute. To improve land. Impollamentm, the improvement so made of it. Id. ib.

37}
In another right, as where executors or administrators sue for a debt or duty, &c. of the testator or intestate.

Jalauta, Profit or product of ground. Cassell, edit. 1757.

In a letter to Mr. Dilettis, Savon. See Combe's Briton, in Otarien, where he says, speaking of Eddington, the barony of Patrick Earl of Dunbar, which also was Interested and outlived 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 ingred and ejectum of titles that travelled to and too between both realms; for England only in ancient time called in their language an entry and ser-court or gate-house, inter alia.

Cassell, edit. 1777.

Intraelitott. To reduce a thing to serve instead of a cake; the word is often applied to mastic, as in Greece. A ploughman says 144, viz. 'Gut' feil morten patres edehon, incaltematam retinebat, so in Mahaly. Eccles. B. Mariae generis Di Leo, incaltemataverat.

In tu fili. Confess. See Catu confessui.

In tu filio professo. Cauth professo.

Inattention. See Certainty.

Inattention, See Ecton, Situating.

Inception. The fame person is patron and incumbent, and he devives the next avoidance; it was objected, that by his death the church is void, and then the presentation is a cllege in action, and not grantable, and the device takes not effect till after the death of devisor, and then it is a good device before the late inception in his life. Rel. Rep. 214. 13 Jac. 2. B. R. in the case of Harris v. Aylen. 3 Blant. 42. S. P.

The condition of a lease, that if he alien to any person during his life, the lessor might enter. Leisce devives it to B. this does not take effect in his life, but has inception in his life. Rel. R. 214. cites D. 45. 3. 5 Duke S. C. cited.

Lease to A. for life, remainder to the right heir of A. is a good remainder to vest upon the death of A. for the inception in his life. Rel. R. 215. cites 7 H. 4.

Initiation gives inception to a lay fee, so that if a caveat be entered before to prevent inducement, a prohibition shall be granted. 2 Rel. 594. Prohibitions (M) pl. 14.

Jureff. See L. R. 622.

Jurisdiction, (Incumbent) Is he that by charms or veires conjures the devil. 36 carminulis vel continuales damnum, ephor. The ancients called them carminis, because in old times charms or veires were in use. 4 Per. Rep. 44. See Witchcraft.

Jurisdictionis, (Incuratorius,) Is a woman that uses charmers and incantations. See Incantateur.


Jurisdiction, Incident, Signifies a thing necessarily depending upon another as more principal. For example, a court-baron is incident to a manor, and a course of yeo-powders to a fair, that they cannot be severed by grant, or by fee or fair be granted, these courts cannot be severed. Kitchin, fol. 30. See Ca et lit. fol. 151.

The law gives to every tenant for life, as incident to his estate without partition of the party, three kinds of efovere, viz. housebote, which is two-fold, one, for burning and burning. Poughbote, the efover for poughing; and haybote, that is efover for fencing and inclosing; and these must be reasonable, and leffe may take upon the land demesned without any assignment, unless restrained by special covenant. And the same of tenant for years. Ca. Li. 46.

The law gives in see, leesse it for life or free (excluding all timber trees) and after the lessor has an intention to fell the trees excepted; the law gives to him and such as shall buy them price, as incident to the same, to come upon the land of the free or free (excluding the trees) and the buyers to view them; for without this they cannot view them. Resolved 11 Rep. 57. Lynda's case.

Licence to lay pipes of lead in another's land to convey water to your cistern; I may enter and dig the ground to amend the said pipe, though it be not expressly granted to me, for a yearly rent to such grant. Dr. Incidents, pl. 8. cites 9 Ed. 4. pl. 25.

It licence be given to a duke to hunt in a park, the law for convenience gives such attendance as are requisite to the dignity of his estate. 9 Rep. 49. b. Trin. 7 Jac. 1. in the Earl of Salisbury's case.

Licence to erect a hay stack, gives licence to include. Admitted. 36. 2. Rol. R. Hill, 17 Jas. 2. B. R. in the case of Wedd v. Paternoster.

At nisi prius, eram Holf, the quittance upon evidence was, whether every house in the market round, had so many feet 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 fol, 36 of necessary consequence, gives you all easments over your neighbour's fol, as lights, passage, &c. without which you cannot use your house; but therefore gives you no intertitle in the fall. And in this case, a buonkeeper who pretended the like interest before his door, though he has no easement, another person, who deems to be a witness. 12 Med. 357. Polach. 17. 16. Farmers of Newgate Market v. Dean and Chapter of St. Paul's.

If a man, either by grant or prescription, has a right to a wreck thrown on another's land, of necessary consequence he has a right to the way over the land taken in and upon the said vessel, there is a right of taking the wreck, and of depositing the wreck is in him before seizure. 6 Med. 135. Polach. 3. Ann. B. R. Anno. See 14 Vin. Abr. tit. Incidents.


Juroflexures, Destroying them in the night, to be made good by the neighbouring towns, 13 Ed. 1. c. 46. 3 & 4 Ed. 6. c. 3. 6 Geo. 1. c. 4. 23 & 25 Car. 2. c. 7.

Persons obtaining inclusions or waives dibiled, 9 & 10 Wil. 3. c. 4.

Taking away gates, poles, pofter, files or hedge wood, or destroying them, how punished, &c. 43 Eliz. 2. c. 17. Car. 2. c. 2. 3. W. & M. c. 10. f. 9. 5 Geo. 1. c. 15. sect. 6. 6 Geo. 1. c. 16.

See Appoiment, Waftes. See L. R. 622.

Juxtae, Præcor vix. Prohibes ne summeus monachus, &c. ut ad am sundet, nec ad feras, fec incoporos faus, vel umnum ex benedictus fuis mutantes. Leg. 1. M. m. 11. tom. 1023.


Jurisdiction, (from the Latin verb incumbere, to mind diligently.) Is a civic right on his benefices with cure, Ca. Li. f. 119. and called incumbent of that church, because he doth or ought to bend his whole study to discharge his
Duties on jappanned and lacquered goods, to be paid at
Colombo, 12 & 13 W. 3, c. 11, sect. 15.
Unrated India goods to pay customs at full at the sale,
2 & 3 Ann. c. 9, sect. 6.
Security to be given for importing the goods to Great
Britain, and paying the duties, 6 Ann. c. 9.
Bonds for exporting India goods to be delivered up,
if no production within three years, 8 Ann. c. 13, s. 24.
India goods to be carried to Ireland only from England,
5 Geo. I. c. 11, s. 12.
Printed silk calicoes, &c. not marked forfeited, 5
Geo. I. c. 11, s. 15.
India goods carried to Ireland, Jersey, Guernesey, Alder-
ney, Sark or Man, or the plantations, not shipped in
Great Britain, forfeiture of ship and goods, 7 Geo. I. c.
21, sect. 9.

The time of sale for unrated India goods, enlarged to
three years, 7 Geo. I. c. 21, sect. 11.
Forei grains may be taken out of warehouses and
refreed, 15 Geo. II. c. 31, sect. 8.
Unrated East-India goods to pay duty of 5 per cent.
21 Geo. II. c. 2, sect. 2.

Indictment. Is a writ or prohibition that lies for a pa-
tron of a church whose clerk is defendant in court
chancellor, in action of tithes commenced by another
clerk, and the tithes belonging to the fourth part of the
court, or of the tithes belonging to it; for in this case the
suit belongs to the King's court by the writ. 31 Geo. II.
c. 5. Wherefore the patron of the defendant, being like to
be prejudiced in his church and advowson, if the plaintiff
obtain in the court chancellor, hath this means to remove
it to the King's court. Reg. Oriz. fol. 35. See Old

Remedy for the patron disturbed by it, 13 Ed. I. c.
1. c. 5. sect. 4.
The ecclesiastical court may hold pleas of tithes not
amounting to the fourth of the church, St. Cimample,
Agins, 12 Ed. I. c. 18.

It shall not be granted till the matter is contended in
the spiritual court, 34 Ed. I. c. 1.

Indico and Indigo. Restraints on exporting it from
the plantations before it had been in England, 12 Car.
cap. 18. sect. 18. 15 Car. c. 2. 7. sect. 6.
To what places the duties, 4 W. 3 & M. c. 5. sect. 2.
Indigo may be imported, 7 Geo. II. c. 35.

Indicted. (Inditatus) 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 indicted thereof. Cowell, edit. 1777.

Indictio. The fame with indictment. Nonnullam
 Italiae de focis super tribunato, & indictiones rubricai
s facentae in apparellis.
An indictment is a brief narrative of an offense committed by any person, 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. Hlft. P. C. 169. 2 Hawk. P. C. 210.

However, from 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 is it agreed, that no damages can be given the party griev'd upon an indictment, or any other criminal prosecution; notwithstanding the King, by his commission entering a new court, expressly directs that the party shall recover damages by such a prosecution. 2 Roll. Abr. 83. Cro. Cas. 534, 558. 2 Hawk. P. C. 210.

Allo where by statute damages are given to the party griev'd by the offence intended to be redress'd, it seems 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 for in an action on the statute, in the name of the party griev'd. 1 Jones 380. Cro. Cas. 428. 1 Roll. Abr. 230. 2 Hawk. P. C. 210.

But if a statute require any act to be done, and by a subhensive 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 recusants to baptize their children by a popish priest; but then it seems to us that it might not to exceed the penalty. 2 Hal. Hlft. P. C. 171. and see Cro. Jac. 663-4.

But if the act be not prohibitory, but only that 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 action of debt, bill, plaint or information. 2 Hal. Hlft. P. C. 171.

And altho' 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, alleged on a criminal prosecution for any offence whatsoever. 1 Kdb. 457. 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 suffered by the injury, whereas the defendants are convicted, by insinuating 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 capital offence without it.

2. By whom an indictment is to be found; who may and ought to be indicted; and whether the indictors, or grand jury, may find part of a bill brought before them true, and put false.

3. Within what place the offence incurred of such offends.

4. What ought to be the form of the body an indictment at Common law, and how it ought to be forth. 1. The substance and manner of the fact; 2dly, The persons men-

5. Where the offence indicted may be laid jointly, and where severally, 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 quitted.

1. What matters are indictable, where an indictment is necessary, or the party may be tried for a capital offence without it.

Not only capital offences, such as treasons and felonies, are indictable, but likewise all other crimes being of a public nature, and made in fe, tho' of an inferior kind, as misprisions, and all other contempts, all disturbances of the peace, all oppressions, and all other misdemeaners whatsoever of a publick 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. 27 Hat. P. C. 20. 28. Indictment 16. Certb. 277. Precedent 26.

Allo generally where a statute either prohibits a matter of publick privilege, 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, but if the party hath once been found on an action on the statute, such fine is, it seems, a good bar to the indictment, because by the time the end of the statute is satisfied. 2 Hlft. 55, 163. Cro. Jac. 577. 1 Med. 34. 8 Sid. 209.

Allo if a statute extend only to private persons, or if 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 Mod. 74, 288. 1 Leto. 299. Royom. 205. 1 Vint. 103. 2 Hlft. 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 fettled at this day, that no punishment is given an indictment, because the mentioning the other methods of proceeding only forms implicitly to exclude that of indictment. 1 Show. 398. 3 Kdb. 34, 273. Cro. Jac. 663, 644. 3 Med. 79.

Yet it hath been adjudged, that if such a statute gives a recovery by action of debt, bill, plaint or information, or whatever, it authorizes a proceeding by way of indictment. 316. 3 Geo. 1. Rex v.DONIN. 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 statutii, it will not make it good as 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 statutii shall be rejected. 2 Hawk. P. C. 211.

In all criminal cases the most regular and safe way, and most conformant to the Common law, and the statutes of Magna Charta, &c. 5 Ed. 3. cap. 9. 25 Ed. 3. cap. 4. 28 Ed. 3. cap. 3. and 42 Ed. 3. cap. 3. is by preceptment 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. Hlft. P. C. 20.

1. If a thief or robber had, on fresh pursuit, been taken with the maimour, and the goods found upon him brought into the court with him, he might have been tried
And for this the British House of Commons has been frequently in practice, notwithstanding the statute of 1 H. 4. and are better within the words not intent of that statute, for it is a preceptment by the most solemn grand inquest of the whole kingdom. 2 Hal. Leg. c. 39.

5. If in a civil action in the King's Bench de muliere abductis cum bovi voire, upon Not guilty pleaded, the defendant be convicted and found guilty of having carried away the woman and goods with force and fahionably, he may be put to answer the felony without further accusation; for such a charge, by the oath of twelve men, on their inquiry 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 which has properly occurred for his benefit. 1 Hal. P. C. 211, and several authorities there cited. 2 Hal. Hift. c. 20.

So it upon a special verdict, in a common action of trespals brought in the King's Bench, it be found that the defendant took them feloniously, this may serve for an indictment. 2 Hawk. P. C. 311. 1 Hal. Hift. c. 20.

So if in an action of slander, for calling a man a thief, the defendant justifies that he rode goods, and slipe thereupon taken, it be found for the defendant; if this be in the King's Bench, and for felony in the same county yet the officer shall be aif it be the justices of assize, who have also a commission of good-delivery, he shall be forthwith arraigned upon this verdict, as on an indictment; and the rest is, because here is a verdict of twelve men in like cafes, and to the verdict, tho' in a civil action, serves the King's suit as an indictment, and the party in the presence of the grand jury, to strike out malpraxis, and ex malitia fat praejudicii, and mandavit, and leave it in such a manner that makes him to be the indictment in the cafes above mentioned. 2 Hal. Hift. P. c. 20. See 3 Mev. 459, &c.

2. By whom an indictment is to be found; who may and ought to be indicted; and whether the indictor, 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 men of the county wherein the crime was committed, returned by the proper officer, without the nomination of any other person. But for this see head of Sutlies.

They must be drafted to legal form. therefore it is a good exception to one returned on a grand jury, that he is an alien or villain, attained in a conspiracy, or deces tantum, or of perjury, or outlawed, or attainted of felony or praemunire. 2 Hal. Hift. P. c. 155.

It seems generally agreed, that a grand jury must find either bills vera, or ignoramus for the whole; and that if they take upon them to find 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 Roll. Rep. 52. 3 Bullo. 266. 1 Knt. Rep. 407. 3 Hawk. P. C. 210.

Hence it hath been hold, that if a grand jury indorse a bill of murder billa vera se defindeat, or billa vera for maunders, and not for murder, the whole is void; and the reason hereof given is, that the grand jury are not to distinguish between murder and maunders, for it is only the circumstance of malice that makes the difference, 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 indictments, that there may be no malicious prosecution; and therefore if the matter of the indictment be not framed of malice, but of self-defence, the indictment be not vera, yet it answers their oaths to present it. 3 Bullo. 266. 2 Roll. Rep. 52. 1 Sdt. 23. 3 Knt. 180. 9 Eil. 5.

But it seems to be now agreed, that the grand jury may, without subjiciing 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. Sutlies.

And it is said by Hal., that if a bill of indictment be for murder, and the grand jury return it billa vera quod maunders, and ignoramus quod murder, the usual course is, in the presence of the grand jury, to strike out malpraxis, and ex malitia fat praejudicii, and mandavit, and leave in so much as makes the bill to be but bare maunders. 2 Hal. Hift. P. 162.

But yet the false way is to deliver them a new bill for maunders, and they to indorse it generally billa vera, and not for the worst, for the indictment take not the difference, but only evidence the silent or dissent of the grand jury; it is the bill itself is the indictment, when affirmed. 2 Hal. Hift. P. 162.

But notwithstanding this discretionary power in the grand jury, yet by the same author, if A. be killed by B. so that it doth erre de pretio sortis & accidentis, and

cause the jury acquitting the man on such an inquest, must require what other person did the fact. 2 Hal. P. C. 212.

And also if on a declaration in the King's Bench against A. for having been guilty of a misdemeanor finalcum B, the jury find B. guilty; it is said, that such a finding is equivalent to an indictment, because it is not wholly extrajudicial. 2 Hal. Hift. P. c. 20. 2 Hawk. P. C. 214.
bill of murder be preferred to them, regularly, they ought to find the bill for murder, and not for manslaughter, or for defendands; because otherwise offenses may be smothered without due trial, and when the party comes uponitur, 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 defense, or for justification, or possibly in executing the process of law, so as an affray made upon him, or in his own defense upon the highway, or in defending 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 informations upon the bill, or find the special matter, whereby the proffered informations disdalled and discharged, he may thereby be indicted for murder seven years after. 2 Hal. Hat. 158.

If the grand jury indici a an indictment on the facts of false news kills were, but whether she works profane forart multiplicit, falsities, sel contra, ignoramus, or if the in- dication of a forcible entry and forcible detainer, kills were as to the forcible entry, and ignoramus as to the forcible detainer; or if they indici a, that the body were in J. S. or the pollution were in J. S. then they find bills were, the whole is void. Tryo. 90. 2 Haw. P. C. 230.

3. Within what place the offence inquired of may arise.

The grand jury are sworn ad inquisitionem pro corpore cimitatus, and therefore by the Common law cannot regularly indict or present any offense which does not arise within the county or precint for which they are return- ed. 2 Hal. Hat. P. C. 165. 2 Haw. 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 Haw. P. C. 220. and several authorities there cited.

Allo if it had been held, that the finding a collateral matter, expressly alleged in the indictment, in a different county or precinct is void. 1 Haw. P. C. 220.

Allo if it had been generally held, 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 cimitatus praedicti, Ut. which seems to be sufficient, when it has gone as far as the indictment the no other county is named before. 2 Haw. P. C. 220.

Allo if a fact be alleged in B. juncto D. in comitatu E. it is said, that hereby it sufficiently appears that B. is in the county of E. 2 Cor. Yac. 41. Land's case.

so if an arrest be alleged in the county of B. and one be indicted for receiving the party arrested, without favoring in what county, it shall be intended to have been in the county of A. where the arrest was. 2 Haw. P. C. 221.

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 Haw. P. C. 221.

So if B. by treason 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 naturae tenure of lands in the county of C. to repair the bridge. 2 Hal. Hat. P. C. 163.

Allo 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 Haw. 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 in England upon the statute of 1 sta. 3. cap. 35. as it is felony, because the second marriage alone was criminal, and the first had nothing wrongful 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 parvus of the dixit statue 1 jac. 1. 1 Haw. P. C. 221. 11. But for this see 2 St. 171. kd. 79. 2 Haw. P. C. 221.

Also if a woman be taken by force in one county, and carried into another, and there married, the offender may be indicted, Ut. in the second county on the ground of the statues, and the party cannot be indicted for a felony in either, but only for a misprision. 2 Haw. P. C. 221.

But notwithstanding the above instances, it seems agreed as a general rule, that the nature of the offence indicted be what it will, if it appear upon Not guilty, of the grand jury, if the party cannot be indicted for a felony, either, in any county, in which the indictment was found, the party shall be acquit- ted. 2 Haw. P. C. 230.

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 neither, because the offense was not complete in either; to remedy this inconvenience, it is enacted by 2 & 3 Ed. 6. cap. 22. ‘That where any one shall feloniously knock or ponioun in one county, and die thereof in another, an indictment thereof found by the jurers of the county where the death shall happen, whether before the coroner or of the body, or whether before justices of the peace, or other justices, &c. shall be as effective, as if the stroke, &c. had been in the county where the party shall die, or where the indictment shall be found.”

So it A. committed a felony in the county of D. and B. had been before or after of the county of C. B. could not have been indicted as accessory 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 accessory. 2 Hal. 150. P. C. 169. but for this fee, ti. Acquitted.

It seems to have been a great doubt at Common law, how treason done out of the realm was triable; some holding, that it was only triable by appeal before the confable and marshall; others, that it was indictable in any county where the King pleaded; and some, that it was indictable wherever the offenders lands were; but for the convenience and security of persons and declarations, it is enacted by 35 Hen. 8. cap. 2. “That all offenses then or after made or declared to be treasons, misprisions of treason, or concealments of treasons, done out of this realm of England, shall be inquired of, heard and determined by the King’s Bench, by lawful men of the realm, or their deputies, and by special commissions, and in such form and manner as shall be ordered by the King’s commission, and by lawful men of the same, in like manner to all intents and purposes, as if such treasons, &c. had been done within the same place, where they shall be so inquired of &c.

In the construction of this act it hath been resolved, that if after an indictment has been taken in pursuance to this statute, the court, or commissioners appointed by the King, remove into a different county, the trial shall be by jurors returned from the first county, being most agreeable to the general course of the Common law, which requires that indictments shall be tried by jurors of the same county in which they were found. 2 Haw. P. C. 223. 3 Inf. 34. P. C. 214. Stanf. P. C. 50. Dyer 286.

That the commissioners and county for the trial are well assified by the King’s writing his name to the commission, or by his signing the warrant for it. 3 Inf. 34. P. C. 223. cap. 22. mar- riage alone was criminal, and the first had nothing un- lawful 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 parvus of the dixit statute 1 jac. 1. 1 Haw. P. C. 221. 11. But for this see 2 St. 171. kd. 79.
So it hath been adjudged, that an indictment for burglary is insufficient, without alleging that it was committed with force and violence, and that the prisoner, or some person, did, or was privy to the breaking and entering. 1 Hawkins, C. 3, p. 225.

Also it is agreed, that an indictment, charging a man with a nuisance, in respect of a fall which is lawful in itself, as the erecting of an inn, &c. and only becomes unlawful from particular circumstances, is insufficient, unless it feith forth some circumstances that make it unlawful. 2 Rol. 2, S. 315. 3 Hals. 368, 374.

So it hath been adjudged, that an indictment for traitorously coining Money like to the King's money, without alleging 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 flowing in what manner, and in what court the false oath was taken, is insufficient; because, for ought appears, it might have been extra-judicial. 2 Hawk. C. 137.

But an indictment charging a man with the taking of goods as a builder of an hundred, more or less, without alleging 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 otherwise be explicable. 1 Sid. 91. 1 Hawk. P. C. 225.

An indictment charging a man disjunctively is void; as murdravi, vel murdravi causavit, or that A. verberavit B. vel verberati causavit, or that A. fabricavit chartam, vel fabricati causavit, for here are different offences, and it appears not of which of them the party is accused. 2 Mod. 137, 138. 3 Hals. 371, p. 8. 2 Hawk. P. C. 225.

Also an indictment charging a man in general terms, without alleging particular the 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, that the facts given in evidence against a defendant on such a general accusation are the facts of which the indictor has accused him; nor can it judicially appear to the court what punishment is proper for an offence so loosely expressed. 7 Lew. 203. 1 Keb. 278, 1 Shaw. 389. 2 Hawk. P. C. 226.

As where the indictment charges the party with having spoken divers seditious 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 persons, men of war and others, amongst his neighbours, or with being a person of evil behaviour, and common deceiver, or a common publisher of the King's secrets, or with being a common forrecaller, a common thief, a common charmer, &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 prolix to enumerate, experience has fetled 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 field is sufficient, without alleging 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 masculum omnium ligaturum, &c. for 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 pottively, and not by way of recital, as with a number and sum, &c. and it must expressly alledge every thing material in the description of the substantive, nature and manner of the crime; for no intention shall be admitted to supply a defect of this kind. 3 Hals. 371. 4 T. C. 42, 5 Co. 130. 2 Hawk. P. C. 227.

Therefore if an indictment of murder want the words ex multis praevia, it is no answer that it has the word
words feloniæ misdiacriti, which imply as much. 


So if any indicent of death want an express allegation, that the party received the hurt laid as the cause of his death, and also that he died thereof, no implication will help it. 2 Hawk. P. C. 227.

Also if it be laid for a feloniously breaking of prison, and commanding J. S. there imprisoned, &c. to escape, do not expressly allege that J. S. did escape, it is no answer that it is fully implied in calling the offence a feloniously breaking. keith. 87. 2 Hawk. P. C. 227.

Yet braided and over nick expectional authors of this kind are not worth regarded; as that an indicent of death, laying the assault to have been with malicious preposen, doth not expressly repeat it in the clause immediately following, and joined with a copulative flowering the giving of the wound at the same time and place. 4 Co. 41. 2 Hawk. P. C. 227.

Or that an indicent, setting forth that J. S. was lawfully arrested by virtue of a plaint before such a sheriff, &c. doth not expressly tew that there was a good warrant. Crs. Jac. 47. 2 Hawk. P. C. 227.

Or that an indicent setting forth an arrest in such a parish and ward in London, by virtue of a warrant, to arrest the person therein named, London, doth not expressly by such parish and ward within the liberties of London. 9 Co. 67. 5 Co. 150. 2 Hawk. P. C. 227.

Or that an indicent finding that J. S. exileth of such a trade, &c. as will bring London within the limits, wherein the indictor, committed such a fact, does not expressly allege that he was of such trade, &c. at the time of the fact; for it fully appears from the natural construction of the participle exileth going before the verb, to which it is the nominative case. Crs. Jac. 610. 2 Male. 118. 2 Rol. Rep. 226. Mos. 165.

2 Lev. 28. 1 Kei. 82. 2 Hawk. P. C. 227. 

Yet it is a good exception to an indicent of forcible entry, finding that A. diffeid B. of such land, exilium libertam teneamentum of B. that it is not expressed at what time it was his freehold; for it flnds indifferent, according to the common rules of construction, whether it was his freehold at the time of the diffeid, or at the time of finding the indicent, the word exilium being applied only to the thing which was the subject of the action, and not being the nominative case of the verb, as in the former case. Crs. Jac. 610. 2 Rol. Rep. 226. 2 Lev. 229. 2 Male. 159. 2 Hawk. P. C. 228.

If one make excus a part of an indicent or a repugnan to another, or the left as laid be impossible or absurd, the indicent 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 forged; or for having diffeid J. S. of land wherein it appears, by the indicent 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 indicent it appears that J. S. was only wounded at B. and died at C. or for felling iron with falle weights and measures, with otherwife, there is no freehold, as fupposing the iron could be fold by measure, but inconfident, in fupposing that it was fo fold, and yet at the fame time fold by weight; or for being absent from church fex months, between fuch and fuch a time, which appears to have contained only the space of eleven days; or for feloniously cutting down trees, &c. yet where the fenfe is clear, a fmall imperfection may be dispofed with; as where one is indicted for having mowed unam acras fami, which is faid to be fufficient, and yet that which was mowed could not, at the fame time of the mowing, in ftrictneffe be called hay, but gras only. 2 Hawk. P. C. 228. and feveral authorities there cited.

Also a repugnan to an indicent in setting forth the offence of the accufery, is as fatal as it is in setting forth that of the principal; as where an indicent of death having laid the froke on one day, and the death at

another, changes the accufery with having abferted the principal at the time of the felony only. 2 Hawk. P. C. 229.

But where several are present and abet a fact, and one only abferts or makes a plea of non imposition, the law makes a demand that the party is to make an appeal, either laden as done by the one, and abferted by the refl. 9 Co. 67. Cod. 97.

But if it barely change a man with having been present, it is void; because a man may be present incognito. 2 Hawk. P. C. 229.

An indicent of J. S. as accufery to four, by these words, Scientif fift iuratur feloniæ presentis præfectus quoque. B. feloniæ recipientis, without adding ess, is nugatous; for it appears not clearly how many of them he is charged to have received. 2 Hawk. P. C. 229.

Also an indicent of a confable for having voluntarily and feloniously, &c. larded a perfon arrefted by him on fulpicion of felony to escape, without fhewing what the felony was, and that it was actually committed, is laid to be void by the uncertainty: But an indicent for knowingly forbidding perons convicted of felony to escape, is laid to be good, without fhewing expressly what the felony was, or that it was committed, if it record of conviction be fet forth with convenient certainty; for there it appears what the felony was, and that it was comitted. 2 Hawk. P. C. 229, and other authorities there cited.

It is holden by some, that an indicent finding that J. S. sceleriæ receptatur J. D. being a felon, is not good, without expressly fhewing that he knew him to be a felon; but it is held by others, that such indicent is good, because the plain construction of the word sceleriæ carries it thro' the whole sentence. 2 Hawk. P. C. 230, and other authorities there cited.

2dly. The indicent muft fit forth with certain the persons mentioned or referred to in it. The name and addition of the party indicted ought regularly to be infected, and infected truly, in every indicent; but if the party be indicted by a wrong Christian name, surname, or addition, and he pleads to that indicent. Not guilty, or answer to that indicent upon his arraignment by that name, he shall not be received after to plead misnomer or falsity of his addition; for he is concluded and effoped by his plea by that name, and of that effoped the gaoler and sherifh that doth execution shall have advantage. 2 Hal. Hyf. P. C. 179.

But it is faid, that an indicent that the King's highway in such a place is in decay, th'o' the default of the inhabitants of such a town, is good without naming any peron in certain. 2 Roll. Abs. 79. 2 Hawk. P. C. 230.

Also it is faid, that no indicent can take any advantage of a mislaid surname in the indicent, either by plea in abatement, or otherwise, notwithstanding such surname have no manner of affinity with his true one, and he was never known by it. 2 Hawk. P. C. 230.

And in this refpect an indicent 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 which is otherways. 2 Hal. Hyf. P. C. 179. 2 Hawk. P. C. 230.

Not only the misnomer of the name of baptifm will abate an indicent, but also the naming the defendant Knight, &c. who is a baronet, and no knight, &c. or the omission of a name of dignity; as where Garter King of arms is not named Garter in the indicent; and let of any other name of dignity, if procés of outlawry lie upon it. 2 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, because the fact being proved against the party presupposing appearing to their view, there could be no injury by the misnomer; also as felon generally go by no certain name, and have no fixed habitation, it was thought hard to find out their real names or professions; but this was altered by the statute 1 Hen. 5. cap. 5. which required that
that in all indictments, &c. the party indicted ought to have the addition of his mystery, degree, place and county. 1 Hal. Hift. P. C. 176.

The additions required by the statute are, that of his degree, name of the gentleman, esquire, or of his military, as husbandman, tailor,foolifter, &c. therefore if the addition be only general, as servant, farmer, citizen, &c. or of crimes and misdemeanors only, as extortioner, vagabond, heretic, there are no good additions. 1 Hal. Hift. P. C. 176. But for this see 2 Hal. P. C. 275.

The addition ought to be to the substantive name, and not to that which comes after the alias dicunt, becauseregularly the addition refers to the last antecedent. 2 Hal. Hift. P. C. 177. 2 Hawk. P. C. 231.

If several persons be indicted for one offence; misnomer, or want of naming one of the indictments only of him, and the rest shall be put to answer, for they are in law as several indictments; and so in trespas. 2 Hal. Hift. P. C. 177. But in 2 Hal. 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 1 Hal. 17.

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 sufficing diversity of crime, or, again the afflur or finding divers perons without cause, or for taking divers funds of money of divers persons for such a trespas, &c. without naming any bakers, &c. in particular, is sufficient. 2 Hawk. P. C. 231.

But an indictment for murder enimulam ignati is good; and to for fufing the goods cuiusdam ignati; fo of an afflur in quandam ignoti, as if he be acquitted, or convicted, and be afterwards indicted for an asslur or murder of such a man by name, he may plead the former conviction or acquittal, and aver it to be the same perfam. Phys. 85. d. Dyer 285. a. 2 Hal. Hift. P. C. 181. 2 Hawk. P. C. 231.

But an indictment quod inventi quondam hominem mortuem, as felonie furcata est duas tuneus, without saying de bimi & cathalis cullum ignati, is not good. 2 Hal. Hift. P. C. 181.

If the goods of a chapel be stolen, the indictment shall say bimi & cathalis cupelle in catholi paupcrorum; but if it be done in time of vacation, bimi & cathalis cupelle tempore vacationi; but if the goods of a parih church be stolen, as the bell, the books, &c. it shall run bimi parochii de cathali cupelle, and shall not suppose them bimi eccles. 2 Hal. Hift. P. C. 181. If the goods which a bami be stolen, the offender may be indicted quod bimi feftatris in catholi A. executoris. 2 Hal. P. C. 181. or it may be general bimi dignus a. 2 Hal. Hift. P. C. 181.

If a dying be buried, and B. opens the grave in the night-time, and fleels the winding thee, the indictment cannot suppose them the goods of the dead man, but the executors, administrators, or ordinary, as the cafe falls out. 2 Hal. Hift. P. C. 181.


There is no need of an addition of the perfon robbed or murdered, &c. unless there be a plurality of persons of the fame name; neither then is it essential to the indictment, tho' sometimes it may be convenient, for distinction sake, to add it; for it is sufficient if the indictment be only such as was killed or murdered, and there are many of the same name. 2 Hal. Hift. P. C. 182.

And it hath been adjudged, that an indictment of an afflur on 7.4 deben, parroch-sprcft of D. in the county of C. is good without mentioning his surname; for the certainty of the perfon sufficiently appears. Noll. 25. 2 Hal. Hift. P. C. 182.

But it seems that if such indictment had only described him by his name of baptizem without any farther addition, it had been too uncertain; yet the contrary seems to be held in Maser; Howevet, it seems agreed, that a repugnancy or aburdity in the description of the perfon injured will vitiate an indictment; as where one is indicted for dealing bini, &c. or for having done to J. S. was mentioned before. 2 Hal. Hift. P. C. 232. Maser 469. p. 662.

It is not necessary to allege in an indictment of death, that the party 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 seal of certain hands, without alleging that the said hands were the hands of any certain person, or for having stolen bimi & cathalis a. 2 Hal. P. C. 183.

For having trespas on 2 close of meadow or pasture, or for having diverted quondam pertinem aquam running from such a place to such a place, without any farther description, or for having inclosed magnam quantitatem flructum & fami, or diversa cumulus triuncii, without shewing how much of each, or for having carried away duas centenas cafii, without adding libras or unctas, &c. or for having erected several cottages contra formam fluidi, without shewing how many. 2 Hawk. P. C. 234.

If there be alleged in any thing, the indictment must set down the value, that it may appear whether it be grand or petit larceny. 2 Hal. Hift. P. C. 183.

If the thing be moveable, as a horse, cow, &c. it is said to must properly to shew its worth by the word pretium; but if the thing be immovable, and consists of divers dead things, it ought to be ad valorem; yet this nicety feems 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 for trespas, for any other purpose, than to aggravate the crime. 2 Hal. Hift. P. C. 183.

An indictment quod felonie erecti 20 oves, matrices & agrum, or matrices & verae, is not good, because it doth not appear how many of one sort, and how many of another; but 20 oves generally might have been good with this particularisation. 2 Hal. P. C. 183. Other indictment in replevin or trespas. 2 Hal. Hift. P. C. 183.

An indictment de quatuor rufis & ciphers, Anglic chefs and coffers, is good, because synonymous. 2 Hal. Hift. P. C. 183.

An 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 indict-
Nad", is enacted, that it shall be treason for a person born within the realm, and in papish orders to remain here, &c. in which case it is said, that the indictment needs not then be sworn for the birth or ordination. 2 Haw. N. C. 237.

Also a mistake in evidence of the place laid is in no case material, on Not guilty pleaded, if the fact be proved in any 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 law, and the statutes of 6 Hen. 6. cap. 1. & 18 Hen. 6. cap. 12. 2 Haw. N. C. 237.

5. Where the offences indicted may be laid jointly, and severally, as well as jointly and severally; and whereas the offences of several persons may be laid in one indictment.

Although the offences of several persons cannot but be several, because one man's offence cannot be another's, but every man must answer for himself; yet if it wholly arise from a joint act, which is in itself criminal, as where several join in keeping a gaining-house, or in deer-stalking, or maintenance, &c. the defendants may be indicted jointly and severally; as thus, 

Yet it hath been solemnly adjudged, that a conviction of deer-stalking, setting forth the offence between the 8th and 12th of July, &c. is sufficient. 3 Haw. N. C. 236.

And in these cases it is said to be most regular to set forth the year, by flying the year of the King; yet this may be dispensed with, for special reasons, if the very year be otherwise sufficiently exprest, for that only in material. 2 Haw. N. C. 236.

Every indictment at Common law must expressly show some place wherein the offence was committed, which must appear to have been within the jurisdiction of the court in which the indictment was taken, and must be alleged without any vagueness; for if one and the same offence be alleged at two different places, or at B. aforesaid, where B. was not before mentioned, or if the stroke be alleged at A. and the death at B. and the indictment conclude that the defendant sic fuisse martharet, the deceased at A. the indictment is void. 2 Haw. N. C. 236.

So it is also, if it lay not both a place of the stroke and death, or if any place so alleged be not from whence a sive may come; as to which it hath been adjudged, that if a fact be alleged in a parih in London, with some other addition which sufficiently ascertains it, or in the parish of St. Lawrence Jewry, it needs not fly the ward. 2 Haw. N. C. 236. 9 Co. 65.

Also in some crimes no will need be named, as upon an indictment of barretcy, because he is a barretter everywhere, and it shall be tried de corpore conunito. 2 Hal. Hist. N. C. 180.

If the margin, the indictment supposing a fact done a quo in commendam is good, for it refers to the county in the margin. 2 Hal. Hist. N. C. 180.

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 a quo in commendam makes the indictment; because two counties are named before, and it is uncertain to which it refers. 1st E. 28. 2 Hal. Hist. N. C. 180.

Indictment against A. B. that he a quo in commendam made an affize upon C. D. of F. in commendam, &c. by which it appears the indicted is not good, because two places named before; and if it refers to both, it is impossible; and if only to one, it must refer to the last, and then it is insufficient. 2 Hal. Hist. N. C. 180.

Indictment against A. B. that he a quo in commendam made an affize upon C. D. of F. in commendam, &c. which, as it appears, the indicted is not good, because two places named before; and if it refers to both, it is impossible; if only to one, it must refer to the last, and then it is insufficient. 2 Hal. Hist. N. C. 180.

It hath been held, that an indictment on a flat charge, prohibiting and such a thing, need not fly the place where the facts happened, which bring the defendant within the prohibition; as where it
The caption of the indictment is no part of the indictment itself, but it is the title or preamble, or return that is made from an inferior court to a superior, from whence a certiorari issues to remove it, or when the whole record is made up in form; for whereas the record of the indictment is the only one upon which the action in rem or in personam is taken, it is only thus: "Jurates pro Domino Regis fuper fueramentum from professit: when this comes to be returned upon a certiorari, it is more full and explicit. 2 Hal. Hil. P. C. 165.

Every caption of an indictment must flow that it was taken before a court which has a proper jurisdiction; and therefore if it flowed only that it was taken before J. S. steward, without flowing to whom or in what court; or if the caption of an indictment flowed, that he was such for the district in which the indictment was taken, it is insufficient; but if it flowed that he was a coroner in the county, it sufficiently flowed that he was a coroner for the county; and if the caption of an indictment flowed that it was taken at the feoff of the peace of such a county, it sufficiently flowed that such feoff was held for the county; but if it only flowed that it was held in the county, it is said to be insufficient; so it is also if it omit the clause nec non ad diversas feliam, &c.; or if it barely flowed that the indictment was taken at a feoff of the peace, without flowing before whom, or without naming of the justices for what place the justices were; or if in describing them as justices ad pacem, &c. confundat, it omit the word aforesaid, but if it sufficiently flowed that some of them were of the quorum, by flowing that the indictment was taken at a general feoff, and if it call them justices of peace, it needs not any farther to show that they were justices of the King's peace. 2 Hawk. P. C. 253.

The caption of a indictment ad magnam curiam cum lata tent, is insufficient; but if it be ad magnam curiam et ad iactam, or ad ujus, franci pleg. cum cur. baron. 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 express, that the indictment was taken at it, as it is in the first case, the court will intend 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 court, the filling of which can be shown by charter or prescription, is helped by the multitude of precedents. 2 Hawk. P. C. 254.

Every caption of an indictment ought to flow that the indiciors were the precinct for which the court was held, and that they were twelve in number, and that they had the hefts of the justices, or filling for them; also the indictmentes have been quashed for an omission of the names of the jurors; and others for want of the words priorum & legaleum hominum; and others for want of the words advocae & hidem before jural & servat; and

others for want of the words ad inspirand. pro Domino Regis & pro corpe communit; yet of late years exceptions of this kind have not been much favoured, especially if the indictment were in the indictment in the superior court, and that which is omitted be, in common understanding, implied in what is expressed. 2 Hawk. P. C. 254.

Every caption must flow a certain day and year when the indictment was found, and must record it in the present sense; but if it describe the court as 'halden di mortis & die Manuscript' on such a day, it will be sufficient. 2 Hawk. P. C. 254.

Every such caption must also flow 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 set forth, that the indictment was taken at a felons of the peace, helden for such a county at B. without flowing in what county B. lies, otherwise than by putting the county in the caption, it is insufficient; but if an inquest of death be set forth as taken at B. before the coroner of the liberty of B. it needst not express that B. is within the liberty of B. for it cannot but be inferred. 2 Hawk. P. C. 255.

By the 7 W. & M. cap. 3. No indictment for high treason or missetation thereof, (except indictments for high treason against the King's coin) shall 'be helden, unless there be any process or return thereupon, shall be quashed for misreciting, misputing, false or improper Latin, unless exception concerning the same be taken and made in the respective court where the trial shall be, by the prisoner, or his counsel affigned, before any evidence given in open court on such indictment; nor shall any such indictment be quashed, if the prisoner shall be at law in the court where the indictment is taken, or in the court where the trial shall be, by the prisoner, or his counsel affigned, before any evidence given in open court on such indictment. 2 Hawk. P. C. 255.

1 Ed. 3. c. 11. and indictee is he that is indicted. 21 fasc. cap. 1.


Indictium, is used for that which two hold in common, without partition. Kirchin, fol. 421. in these words, He holds pro indiviso, &c.

Indicta, A studious young man, or a youth. Ego Edgar indita Cite confingi. Mon. Angl. 3 tom. p. 120. indictamentum in conditionem, for any thing written on the back of a deed, as a condition written on the back of an obligation is commonly called an indorsement. Weit. Symbol. part. 2. sect. 157.

Where 'tis written on the back of an obligation, (received to 10 l. in part of payment) it may be pleaded for Beso. 3 Br. Pint. 21, Br. Pint. 32. sect. 5.

And upon a sheriff's bond of 20 l. indisored thus, to save the sheriff harmless, he shall plead it as a condition. Br. Pleadings, p. 23 cites 21 Hen. 6. 51.

If a man delivers a single obligation to J. N. and after J. N. indisores a condition upon it, this shall serve as the obligation to three justices; quod est. Br. Obligations, p. 2 cites 2 Hen. 8. 9.

An indictment for forcible entry was preferred to the grand jury, who returned thus, therein. As to the entry with force, ignominiis; as to the detainer with force, X X X.
bills vera.

But this indorsement not being fpied, but being taken by the juries of the peace for a full indenture in both points, they allowed it; and the defendant, having been adjudged in J. B. R. by certiorari, and the indorsement returned as above, they award re-refilution. It was moved, that they ought not to regard the indorsement, for the court did not fend for that, but only for the indenture; and this indorsement not being a full indenture at all, and the clear, and alieneed, and deduct a placentum, but good placentum pendet indormentum, & the plaintiff replied, that the judgment was affirmed, oblique quo quid placentum pendet indormentum, &c. the defendant demurred, and adjust'd for the plaintiff in C. B. but upon error brought in B. R. the court ordered the defendant's demurrer; because it makes but a matter of inducement, which fhad been the point in issue; and also, because the traverse puts a matter in issue to be tried by the country; and was going to reverse the judgment, but an exception was flarted to the writ of error, for which it was quashed. 2 Saund. 239. Poflb. 4 Am. B. R. Poflb. v. Morriff. See Pleading, and 1 Ex. Abr. tit. Inducement.

Inducement, (Inddtuim.) A leading into. It is mostly commonly taken for the giving poftition to an incumbent of his church, by leading him into it; and delivering him the keys of the communion, or bishop's deputy, and by his right of the keys. Cr. de Rep. 3 parts, fol. 29. See Benefice.

In cfe, (mentioned in flat. 21 Jac. cap. 2.) In being. The learned make this difference between things in cfe, and things in tiffus, or potentia; but a thing apparent and visible, they try, is in cfe, that is, has a real being, as inflammari, whereas the other is causal, and but a poftibility. As a child before he is born, or even conceived, is a thing in tiffus or potentia; or may be; after he is born, he is said to be in cfe, or actual being. Cowell, edit. 1727.


Infallibilis. This word occurs only in Ralph de Hengham, Summa parva, cap. 3. Vr committit feloniam quem quid fuerit, usuitatis, vel alia modis mariti dominati, vel demisememtus, vel auop Deore infallibilis, vel auop Saxoniam usu inuwadit, & de iles de specimen, us uop domicilito, us uop Norvegicum, vel in mariti superaduantis, sicat in aliis partes portae. — Mr. Selden, in his note on that author, says thus, "It appears that several cuftoms of places made in those days capital punishment feveral. But what is infallibilis? In regard of its being a cuftom used in a port-town, I suppose it was made out of the French word falsere, which is fine fund by the water side, or a bank of the sea. In this fiend or bank it feem their execution at Deore was." The elaborate Du Peire condemns this derivation and this fene of the word, but yet gives no better. And therefore, till we have more au- thority, I think that the punishment by water in Nauada, and afterwards the capital punishment inflicted on the lands or sea-féere. Perhaps infallibilis was erop sign the malefactor to be laid bound upon the lands, till the next full tide carried him away; of which currence, it I forget not, there is some dark tradition. However, I believe the penalty took enormous, and comprehends to be thrown not only on the lands, but not the rocks and cliffs adjoining or impeding on the sea-féere. Cowell, edit. 1727. See the like use of falsere in Min. Angl. tom. 2. p. 105 b. 

Jufatn, Which extends to forgery, perjury, graft cheets, &c. enables a man to be a wittius or judor; but whatever he does, whether in his perjury, or in his graft, he is not in the gaol, and may not be delivered, and so should lie longer than is feasible. 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 adjudge'd for the plaintiff. Cru. Ed. 525. Paflb. 43 Ed. 17. Jif. 12. 38. For on a recognizance of bail on a writ of error of a judgment in debt given in C. B, conditioned, that if the plaintiff be nonuit, the writ of error discontinued, or if judgment affirmed, then he should pay, &c. defendant prayed over, and pleaded that the plaintif in C. B. was not therein brought, and his consent, and aligned errors, et qualz placentum pro praxidet, beoffe errores alio penda, in indormentum. &c. the plaintiff replied, that the judgment was affirmed, oblique quo quid placentum pendet indormentum, &c. the defendant demurred, and adjust'd for the plaintiff, and upon error brought in B. R. the court ordered the defendant's demurrer. because it makes but a matter of inducement, which had been the point in issue; and also, because the traverse puts a matter in issue to be tried by the country; and was going to reverse the judgment, but an exception was flarted to the writ of error, for which it was quashed.
person was convicted was not infamous, it inferred no
in-famy. 3 Lev. 240.

Infangtheif, Infangtheif, or Infangthefe, is
compounded of three Saxen words; the preposition is,
such as to, take or catch, and thief, a robber: It is
a law, and of such kind of ma-
ners to judge any thief within their fee.

Britton, lib. 3. trad. 2. cap. 35. faith, Dicitur infangthefe latro
captus in terra aliena de hominibus falsi proprii, fessitis latrocinii.
Infangthefe vero dicitur latro extremam, ventens aliume de terra aliena & qui captus fut in terra eftius, qui
habeat libertatem, &c. In the laws of King Edward the Confessor, fet out by Mr. Lambert, cap. 26, you have it thus defcribed: Infangthefe, i:l\nutritione latronis quae tull ex, de homine sui, ii captus fuerit super terram jacat: Illa qui non habet bonum fucceffionem etiam infangthefe Regia
action falsum in hundredis, &c. Infangthefe, i.e. quod la-
necens captus in Domino etut fede priores, & fessitis latrocinii
covirtit in curia Dominii prioris judicentur, & ad fuos ejus fujendorum. Ex Reg. Priorat. de Cokesford. So
it was necessary the thief should be taken in his
lordship, and with the goods stolen, otherwise the lord
had not jurisdiction to try him in his court; but by the laws
of Edward the Confessor, he was reftained to his own
people or tenants, or he might try any man who was
thus taken in his manner: the definition hereof fee alfo
in Britton, fol. 90. and Reg. Hoveden, port. potior. fpr.
Annal. lib. 345. And hence de verb. jenif., who writhe
the law of Eadward the Confessor, in one of his opinions touching this
and "infangthefe. Fleta. lib. 1. cap. 47. says, Infangthefe
(for to be writ) dicitur latro captus in terra aliena, fessitis aliquo interna de sui propriis hominibus. Stat. 1 & P. & M. cap. 15.

34. Infant. (Infans,) Before the age of one and twenty
years, a man or woman is called an infant in the law.

Co. en Litt. lib. 1. cap. 21. and lib. 2. cap. 29. An in-
fant of eight years of age or above, may commit homicide,
and be hanged for it, viz. if it may appear by hiding the
peron, by excusing, or by any other act, that he had
knowledge of good and evil, and of the danger of the
act, or that he was not through the negligence of others,
or through the ignorance of age. 22. Yet Co. upon Litt. sect. 405. faith, That an infant
shall not be punished till the age of fourteen, which,
says he, is the age of discretion. Crouch, edit. 1737.

1. The feveral ages and periods distinguished by the law
for several purposes.

2. Who are to be confidered as minors; and how for the
law regards and takes notice of infants in venture to
mere.

3. How infancy is to be tried; of what public offices
and trusts an infant is capable; and of what things he is
capable 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 pais.

1. The several ages and periods distinguished by the law
for several purposes.

From the observations made on the daily actions of
infants, as to their arriving to discretion, the laws and
customs of every country have fixed upon particular
periods on which they are presumed, and married Mt. Filler,
and upon fut in the spiritual court the second marriage
was affirmed: The Lord Decius appealed to the delegates,
and it was argued by Civilians and Common lawyers
before the bishops of London and Rochester, North Ch. J.
Littleton Baron, Jason and Atkins Jucilices, and several
Doctors of the civil laws there. This argument could not
contract matrimoniy, but only synquinio de futuro, and therefore tho' they bind themselves per verbo de pra-
fenti tempore, yet the law, by reason of the incapacity
of the parties, would make such a composition that it shall
only be a contract de futuro. In this case indeed, one of
the parties is of age of content, but that makes no di-
versity; for a contract of matrimoniy is utroque obligatorius,
and reciprocal in its nature. On the other side it was
said, that such a contract as this betwixt persons of
unequal ages might as well claudicate as other contracts,
which are also utroque obligatorius; they said, that a con-
tract of marriage carries a relation in itself, and is reci-
proal, but that in some cases this may fail, by reason of
an accident or circumstance in the persons, notwithstanding
which the nature of the thing will remain to be utro
cretum obligatory, as we see in other contracts; but argu-
ments from the definition of civil affairs are not cogent;
for no law can bind without the approbation of the parties
and circumstances, and but ought to be differently applied ac-
cording as the particular circumstances require. The law
does not make contracts per verbo de praefenti tempore to
be contracts de futuro, but in cases of minors, and they
cannot they except, that contracts per verbo de pre-
fenti by majors, shall be by construction made contracts
de futuro. The laws of God and nature require per-
formance of promises and agreements; and the woman,
N. W. Freeman, male, 2. Alfo which fifteen and Hob. 225.

Inf.
At Every summer affirms 1748, William York, a boy of
the years of age, was convicted before the
Chief Justice, in the 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, refused
execution, till he should have an opportunity of taking
the opinion of the tell of the judges, whether it was
proper to execute a child. The boy was kept in the house of the judge,
which he reported to the judges as follows: The boy and girl were parish children, but under
the care of a periphrizer, at whose house they were lodged
and maintained. On the day the murder happened, the
man of the house and his wife went out to their work
leaving the little girl in the company of the minor and his mother.
When they returned from work, the girl was
milking; and the boy being afraid what was become of her,
answered, that he had helped her up, and put on her
clothes, and that she was gone he knew not whither.
Upon this, first search was made in the ditches and
pools of water near the house, from an apprehension that
the child might have fallen into the water. During such
search, the man under whose care the children were, ob-
served that a heap of dung near the house had been newly
turned up. And upon removing the upper part of the heap, he found the body of the child, about a foot's
depth under the dungheap, covered by a huge,
horrid and horrid manner. Upon this discovery, the
boy, who was the only person capable of committing the
fact, that was left at home with the child, was charged
with the fact, which he stillly denied. When the coroner's jury met, the boy was again charged, but per- ismmed to be not guilty.
Upon his being charg- gated, he fell to crying, and said he would tell the whole
truth. He then said, that the child had been used to foul
herself in bed; that he did so that morning (which was
not true, for the bed was searched, and found to be clean);
that thereupon he took her out of the bed and carried her
to the dung-heap; and with a great knell which he
found about the house, cut her in the manner the body
appeared to be mangled, and buried her in the dung-heap;
placing the dung and straw that was bloody under the
body, and covering it up with what was clean; and
having so done, he got water and washed himself as clean
as he could. The boy was the next morning carried
before a neighbouring judge, before whom he repeated
his confession, with all the circumstances he had related
to the coroner and his jury. The judge very prudently
delayed proceeding to commitment, till the boy should
have an opportunity of conflicting with the minor who had
accused him of the danger he was in; if he should be thought guilty of the fact he fled charged with,
and admonished him not to wrong himself; and then or-
dered him into a room; where none of the crowd that
attended should have access to him. When the boy had
been five hours in the room; where without drink or
beverage, he was brought a second time before the
judge, and then he repeated his former confession;
upon which he was committed to gaol. On the trial
evidence was given of the declarations before mentioned
to have been made before the coroner and his jury, and
before the judge; and of many declarations to the fame
purposes. He was committed for a time, but at last, he came
to gaol, and even down to the day of his trial. He
confessantly told the same story in fulness, com-
monly adding that the Devil put him upon committing
the fact. Upon this evidence, with some other circum-
cumstances tending to corroborate the boy's confession.
Upon this report of the Chief Justice, the judges
having taken time to consider of it, unanimously
agreed. 1. That the declarations stated in the report were
evidence proper to be left to the jury. 2. That supposing
the boy to have been guilty of this fact, there are so many
from the plea of infancy, or may take a legacy; also if there are two or more at a
birth, they flound upon one executor or one least part
of the thing bequested; for the Civil law, for the benefit
of the infant, repents a child in his mother's womb in the
same condition as if it were born.

Geddes, O. Ph. Lab. 102.

2. Who are to be considered as minors; and how far the
laws regard and take notice of infancy in ventre a mare.

The privilege of infancy does not extend to the King;
for the political rules of government have thought it ne-
cessary, that he who is to govern and manage the whole
kingdom, should never be considered as a minor, inca-
pable of governing himself and his own affairs. Co. Lit.
43. Pryor 209 b.

Therefore inf 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.

Pleas. 1123 a. 5 Co. 27. 7 Co. 12.

So of the King content to an act of parliament during
his minority, yet he cannot after avoid this tert; because the
King, as he cannot be a minor; for as King he is a body politic. Co. Lit. 43. 1 Roll. Abr. 728.

Also the acts of a mayor and commonly shall not be
avoided, by reason of the nonage of the mayor. Co. Car.
5570 a. Co. 12.

Altho' 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 noblemans, who may and doth retain
chaplains, yet he may qualify chaplains to be dispended
withal to hold two benefits with care, in like fort as if he
were of full age. 4 Co. 119. Camp. Incomb. 23.

An infant boy (for not any child may be) coming to age,
knew of their some privileges of the infant at Common law; because tho' he
has the privilege of alienation at fifteen, yet that
do not take from any privilege he had before at
Common law. 1 Roll. Abr. 144.

A buffard being implaied that 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 lay the
fuit, before it can be inquired whether he is or is not a
buffard. Co. Lit. 244 b.

A child in ventre a mare may be appointed executor,
or may take a legacy; also if there are two or more at a
birth, they flound upon one executor or one least part
of the thing bequested; for the Civil law, for the benefit
of the infant, repents a child in his mother's womb in the
same condition as if it were born.
If there be bastard rigor and mulier pojitor, and the bastard enters, and dies therein, his issue shall inherit the lands, and exclude the mulier for ever; but in this case if the bastard had died leaving issue in ventre sa mere, and the mulier had entered, and then a son is born, yet cannot be enter upon the mulier: And because the law differs, if the court law requires an immediate decedent, which cannot be before the person is in offe: also by our law the frehold cannot be in abeyance. Ca. Lit. 244.

It appears to have been a matter of much controversy, whether a devise of lands to an infant in ventre sa mere be good, so not in being to take at the time of the death of the devisor; and since, as some say, by the devise the peron is to take immediately after the death of the devisor, the freehold cannot be put in abeyance by the act of the parties; but others hold, that such devise is good, that the infant be not in offe at the death of the devisor, and that the freehold shall not be in abeyance, but shall devound to the heir at the law in mean time. 11 Hn. 6. 13. Bro. Devise 32. Mar 1777. 637. 2 Bth. 727. 3 Rec. 473. 1 Lev. 135. 1 Sid. 153. Raym. 163. 1 Keb. 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, when God shall give him birth, is good as an executory devise, and that the frehold shall devound to the heir at the law in mean time. 1 Sid. 153. 1 Lev. 135. Raym. 163. S. C. Snow and Cutler.

So it is clear, that land be devised for life, the remainder to a wild-humous child, that this is a good contingent remainder; because there is a peron in being to take the particular estate; and if the contingent remainder vests during the continuance of the particular estate, or on infantate that it determine, it is sufficient. Mar 657. Church and Wiss. 3 Rec. 46b. 4 Mol. 539. 1 Sid. 227. 829. 6 Townsend 409. and see 19 U. & W. 3. cap. 16. and Remainders.

Alfo it seems agreed, that a man may surrender copyhold lands immediately to the use of an infant in ventre sa mere; for a surrender is a thing executory, and nothing vests before admission; and therefore if there be a peron 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. 130. 138. 2 Bth. 727. 3 Ca. Taph. 9. and see Mar 637.

If an usurpation be had on one in ventre sa mere; at the next futer after his birth, he shall be relieved on the statute of W. & Th. 2. cap. 5. Hdb. 240.

3. How infancy is to be tried; of what public offices and trusts 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 whereassoever it is alluded 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 and the time of the plea, there it shall be tried per pausi. 1 Lev. 142. 1 Sid. 341. 1 Hen. 756. Cro. Jac. 55. 581.

But here we must observe, that as to judicial acts, or acts done by an infant in 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 be tried 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 aduntia, may in such cases inform themselves by witnesses, church books, &c. Ca. Lit. 380. Mar 76. 3 Rol. Abr. 15. 2 Inf. 483. 3 Inf. 380. 12 Ca. 122.

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 cemoral, ought to variance his contract when he appeared to be under a disability at the time he entered into it. Ca. Lit. 380. Mar 884. Kiculton’s case.

An infant acknowledged a fine, and the conuueses omitting to have the fine ingrossed till he came of age, the infant in bringing a writ of error; yet the court upon venue 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, Ca. Lit. 380. 1 Rol. Abr. 230.

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 reserve it after his full age, as it may be discovered whether he was under age when the recovery was suffered; because it may be tried per pausi whether the warrant of attorney was made by him when he was an infant. 1 Sid. 321. 1 Lev. 142.

It is said, that in all cases where the party pleads that he was within age at B. and alleges a place, that there the trial may be well enough where it is alluded; where no place is alluded, 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. 1 Sid. 153. 11. Cro. Era. 818. 8 P. P.

An infant enCreator in a recognition of 1000l. as bail to J. S. which became forfeited, and he taken in execution; wherupon he brought an auditia querela, fogging his infancy, and the writ being brought into court, he appeared in propria persona; and it was moved, that he might be inspected, and his witnesses examined; and thenceupon his mother peremptorily departs, that she at that very time he 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 he had been taken in execution, he must have had a supersedeas of 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 regifter where he was born, which being in Torgh, he appeared again in fiacculum termus in cupidly, and a copy of the birth 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. Cartis. 278. Trin. 5. 3. Lloyd v. Eagle.

As to what offices and trusts an infant is capable; he frequently is mentioned in the statute acts as do not contain the confirmation of justice, but only require skill and diligencens; and there it seems he may either exercise himself when of the age of discretion, or they may be exercised by deputy; such as the offices of park-keeper, forester, garter, &c. Pintw. 379. 381. 9 Co. 48. 97. See Cis.

But it is said, that an infant is not capable of the stewardship of a manor, or of the stewardship of the courts of a bishop; because by intendment of law he hath not sufficient knowledge, experience and judgement to use the office, and also because he cannot make a duty. Ca. Lit. 3 8. 1 Rol. Abr. 531. 2 Rol. Abr. 155. Adarhs 41. 43. Cro. Era. 636. Cro. Car. 558.

An infant cannot be an attorney, bailiff, factor or receiver. F. N. B. 118. 1 Rol. Abr. 117. Ca. Lit. 172. 3 Cro. Era. 637.

If an infant, being master of a ship at St. Christopher's birth, entered into a contract with another, under which he was 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 confesses 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 in the
INF

the Common law. 1 Rel. Atr. 130. Forrest and Smith, and a prohibition denied to the court of Admiralty.

If an infant keeps a common inn, an action on the
cafe upon the custom of inns will not lie against him. 2 Rel. Atr. 2. Carth. 161. cited.

So if an infant draws a bill of exchange, yet he shall not be, and must not, unless it can be shown to him, but he may plead infancy in the same manner that he may to any other contract of his. Carth. 160. Williams v. Harris, Jr.

Adjudged on demurrer.

An infant cannot be a juror; and it is said by Hibbert, that by the wisdom of the Common law a person under ten years of age could not be a juror of a indictment, because he then tried a matter which might have happened before he was twenty-one. Hb. 325.

An infant, or one under the age of twenty-one years, cannot be elected a member of the house of commons; nor can any lord of parliament sit for his own. 26 Geo. 3.

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 disagreeth thereon, because an agreement is presumed, it being for his benefit, and because the freehold cannot be defeated contrary to his own act, nor can be in abeyance, for then 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; and for they shall not be bound by the act of the person for whom he claimed capacity to contract.

Co. 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 Bul. 69.

If an infant be lord of a copyhold manor, he may grant copyholds notwithstanding his non-age; and for these estates do not take their perfection from the intereat or ability of the lord to grant, but from the custom of the manor, by which they have been demised, and are demisible time out of mind. 4 Co. 23. 6th. Co. Copyholder 79. 107. Noy. 41. 8 Co. 65.

An infant may prent to a church; and here it is said, that this must be done by himself, of whatsoever age he be, and cannot by law be done for him, because a guardian cannot make any advantage thereof, and consequently has nothing therein whereby he can give an account; and therefore the infant himself shall prent. Co. Lit. 17. b. 89. a. 29 Ed. 3. 5. 3 Inst. 150.

The act of infants as they are good, void or voidable, viz. contrats for necessaries, judicial acts, and acts in pais.

Contrats for necessaries. Here we must observe, that, strictly speaking, all contracts made by infants are either void, 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 for 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 recede from and vacate it when it may prove prejudicial to them; but in this contract for necessaries they are absolutely bound, and this likewise in benignity 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 Rel. 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, necessary physic, and such other necessaries, and likewise for his good teaching and instruction, whereby he may profit himself afterwards, Co. Lit. 172. e. 6th.

But it must appear that the thing were actually necessa-
y, and of reasonable prices, and for such a time as the in-
fant's degree and estate, which regularly must be left to the
court; but if the jury find that the things were neces-
saries, and of reasonable price, it shall be presumed they had evidence for what they thus find; and they need not find particularly what the necessaries were, nor of what price each thing cost; also if the infant be allowed for other things as well as necessaries, or alleges too high a price for those things that are necessary, the jury may condescend to judge those things that were really necessaries, and of their intrinsic value, and proportion their damages accordingly, 12 Cro. Jct. 360. 2 Rel. Rep. 144. Poph. 151. Palm. 291. Gwef. 168. Good. 219. 1 Lev. 114.

If an infant promises another, that if he will find him meat, drink and washing, and pay for his schooling, that he will pay 7 l. yearly; an action upon the cafe lies upon this promise; for learning is as necessary as other things, and though it is not mentioned what learning this was, yet it shall be intended what was fit for him, till it be flown to the contrary on the other part; and though he to whom the promise was made did not in

struct him, but pays another for it, the promise of re

compense is good, and it appears that the learn-
ing, meat, drink and washing, was necessary for a left sum than 7 l. 1 Rel. Atr. 729. Palm. 528. 1 Jam. 182. S. C. Pickering v. Gunsing, adjudged on a motion on an arrest of judgment.

Suits for labour and medicines in curing the defendant of diftemper, &c. who pleaded infra aetatem viginti et annum, said the plaintiff, it was for necessaries generally; and upon a demurrer to this replication it was objected, that the plaintiff had not assigned in certain how or in what manner the medicines were neces

sary; but it was adjudged, that the replication in this case of general form was good. Carth. 110. Hoggins and Wife

man.

If an infant be a mercer, and hath a shop in a town, and there buys and sells, and he contracts to pay a certain sum to J. S. for certain wares fold to him by J. S. to re-sell, yet he is not chargeable upon this contract, for this trading is not immediately necessary ad viocem & vulsum; and if this were allowed, infants might be in

finitely prejudiced, and buy and sell, and live by the


And as the contract of an infant for wares, for the necessary carriage of them on his trade whereby he subsists, will not bind him; nor whether it be money which he borrows to lay out for necessaries; and therefore the lender must, at his peril, lay it out for him, or see that it is laid out in necessaries. 5 Mod. 268. 1 Salt. 386. 7.

As in debt upon a fingle bill, the defendant pleaded that he was within age; the plaintiff replied, that it was for necessaries, viz. 10 l. for cloaths, and 15 l. money lent pro & erga his necessary support at the university; the de-

fendant rejoined, that the money was lent him to spend at pleasure; aliquote hact, that it was lent him for necessa

ries; and it was found for the plaintiff, who had judgment in C. B. but was reversed in P. R. on a writ of error; for the issue only being, whether this money was lent the infant for necessaries, not whether it was laid out in necessaries, it cannot bind the infant which ever way it is found; for it might have been borrowed for necessaries, and laid out in a tavern; and the law will not intrull the infant with application and laying of it out. 1 Salt. 356. Earl v. Pele.

So if one lends money to an infant who actually lays it out in necessaries, yet this will not bind the infant, nor subject him to an action; for it is upon the lending that the contract must arise, and after that time there could be no contract to bind the infant, because after that he might waste the money, and the infant's applying it afterwards for necessaries will not by matter esse factum intelle the plaintiff to an action. 1 Salt. 279.

Altho' an infant shall be liable for his necessaries, yet if he enters into an obligation with a penalty for payment thereof,
of and yet Roll. but for Keb. for and he declare Teh. he once cord, 94. of fant, againft Cafes Duncomb fchooling an 115. of anfters, were of aneftaries, of an infant, they were improved into a common way of conveyance, it was thought reasonable that tho, whom the law had judged incapable to act for their own interefl, should not be bound by the judgment given in recoveries, tho' it was the foulem act of the court; for where the defendant gives or judgment, it is as much his act and conveyance, as if he had transferred the land himfelf or any other act in pais; and therefore if an infant fuffers a recovery, he may reverfe 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 perfon: But now the judge normally acts upon this point, that it has done right, a recovery in perfon, it is erroneous, and he may reverfe 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 at his full age it becomes obligatory and unavowed; but in cases where the court has admitted the infant to appear by guardian, and to fuffer a recovery, or come in as a voucher; but this too is feldom allowed by the court, unlefs it be upon emergencies, when it tends to the improvement of the infant's affairs, or when lands of equal value have been fettled on him, and when he has had the King's Privy Seal for that purpofe; and then the conveyances have been allowed and supported by the judges, and the infant could not fett them aside or flake them; besides, if fuch recoveries be to the prejudice of the infant, he has his remedy for it againft his guardian, and may reimburse himfelf out of his pocket to whom the law had committed the care of him. 1 Roll. 735, 742. Ca. 1381. b. 2 Roll. Arol. 395. 10 a. 63, 64 Cre. Elt. 657. 196-7. Car. Gar. 307. 2 half. 235. 1 Sd. 212-2. 1 Lev. 117. 2 Sand. 94. 1 Form. 491. 2 Salt. 567.

Partition by writ. Partitions fivendi binds infants, because by judgment in a court of juflice, which no partiality can be imputed. Ca. Lit. 171 b.

If an infant acknowledge a reflation or flature, it is only voidable; and the infant at his peril muft await them by audita quæra, as he muft a fine or recovery by writ of error during his minority; for fuch conveyances or other acts of record become obligatory and unavowed, if they be not fett aside before the infant comes of age; the reafon is, because thefe acts being entered into under the inspection of the judge, who is fuppoled to do right, the infant cannot ftrive againft their ria dibility, but muft reverfe them by a judgment of a fuperior court; and however Muñcan has the fame means to determine whether the inferior jurifdictions had conformed the infpeflion that first received the contract. Mar pl. 206. 2 inf. 493, 673. Ca. Lit. 380. Rec. 10. 1 Reg. 149. 10 a. 43 b.

If an infant bargain and fell his land by deed indented and figned, he may plead non-age; for notwithstanding the flature 27 Hen. 8. cap. 6. an infant is regularly allowed to refind and break through all contracts in pais made during minorities, except only for schooling and neceffities, be they fuch as much to their advantage; and the reafon hereof is, that indulgence the law has thought fit to give in- fants, who are fo weak to want judgment and difter-
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FIN in their contracts confent with others, and
there it takes of them preventing their being im-
posed upon, or over-reached by persons of more
years and experience. 30 Ed. 3. 20. 6. 1 Rot. Atr.
Co. Lit. 172. 381.

And for the better security and protection of infants
herein, the law has made some of their contracts abso-
utely void, all faculties, goods, benefit or 
benefit or semblance of benefit to the infant; and 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 ever again what
they have done, either to take them again, or not, or to
break through and avoid them. C. C. Cas. 502.

1 James 425. 3 M. B. 310.

Hence it has been agreed, that an infant may per-
haps, because it is intended for his benefit, and that at
his full age he may either agree or disagree to the fame.
2 Rot. Atr. 2. 2 Vern. 203.

Alfo the feoffment of an infant is not void, but only
voidable, not only becaufe he is allowed to contract for
his benefit, but becaufe that there ought to be some act
of notion to render the feoffment to the infant, equal to
that which was invested in him. C. C. Lit. 380.

Dyer 104. 2 R. Atr. 577. 4 C. S. 125. 6.

Therefore if an infant make a feoffment and livery in
perpetuity, he shall have no affize, &c. but must avoid it
by entry; for it is to be presumed in favour of such
folemnitie, that the assembly of the pais then present
shall have presumed it, if they had perceived his non-age,
and therefore the feoffment shall continue till defeated by en-
try, which is an act of equal notoriety. 8 Co. 42. Bro.
t. Diff. 69.

But if the infant had made a letter of attorney to de-
lever foins, he might have an affize, &c. because the
letter of attorney, like all other acts or agreements made
by an infant, must be void, and therefore whoever claims under it, or by virtue of its autho-

ity, must be a wrong-doer. 2 Rot. Atr. 2. 76. 2

Palm. 238.

Alfo as to the acts of infants being void or voidable,
there is a divercity between an actual delivery of the
thing contracted for, and a bare agreement to deliver it
only: that the void is rightful, but the laft 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

1 Rot. Atr. 730. 3 Rot. Rep. 408. Letter of attorney,

infants, as the 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 trespass; for the grant was merely void. Pref.

t. enf. 12. 19. 1 Med. 137.

In trespasses quare et armis infantum facit, & tertium crimen

infinitum, the defendant as to all the trespass pro tergum criminis pleads Not guilty, and as to

that, pleads that the plaintiff was of the age of sixteen

years, and for a certain sum of money liquidamitavit

deponent duas unius criminis dicte Anna defendenti

officinat; and upon the deponent to ples the court

concluded at large, the defendant pleased not guilty, and sub-

sequently the cause unawaful, and gave judgment ac-

correspondingly for the plaintiff. Mich. 26 Car. 2. Anna Se-

chroban per Guardianam v. Sturman. 3 Rot. 369. S. C.

And as an infant is not bound by his contract to de-

liver 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 contention, 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

wiltfully takes away the goods of another, trover lies

against him; and if a contract be in issue, it is, that he take goods

under pretence that he is of full age, trover lies; but

it is a willful and fraudulent trover. 1 Ed. 129. 3

Lev. 169. 1 K. 905. 913.

Alfo 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, if by combination with his guardian,

&c. be make any contract or agreement with an intent

afterwards to elude it, by reason of his privilege of in-

fancy, that a court of equity will decree it good against him

to accord the circumstances of the fraud; but in

what cases in particular a court of equity will thus ex-

ploit itself is not easy to determine. Vidi 1 Vern. 132. 2

Vern. 220. 5.

Alfo notwithstanding the diffibility of an infant to con-

tract, 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 Exchequer, signified by an

order made upon being by a court of record, 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

mortgagee 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, whereof any infant or infants are or shall

be seised or possessed by way of mortgage, or of the per-

son or persons intituled to the redemption thereof, to con-

vey 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 ob-

tained direct, to make such conveyance or conveyances,

affu-

ance or assurances of such as afoledged, in like manner as trus-

tees 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

fhere in the plantations. 4 Gen. 1. c. 11. fer. 5. See

Copsholds.

For more learning on this subjeA, see 3 Bac. Abr. tit.

Infancy and Age, and 9 Vin. Abr. tit. Enfant.

Infants, when of age. An infant has been adjudged

of age the day he was born, so for the law no


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In courts of piepowder the plaintiff shall swear that the cause of action accrued within the time and jurisdiction of the suit, 17 Ed. 4. c. 2. 1 Ric. 3. c. 6.

The consideration of affirmans must be laid within the jurisdiction of an inferior court, but the promise need not, 1 Ld. Raym. 411. In fact, judgment on a judgment of an inferior court, removed by certiorari, the plaintiff must pray execution within the limits, otherwise on a writ of error. 1 Ld. Raym. 216.

Judgment by process of an inferior court, is not avoided by objection that the cause of action arose out of the jurisdiction. 1 Ld. Raym. 330.

No prohibition to an inferior court for proceeding in a cause arising out of their jurisdiction, till that matter has been pleaded, 1 Ld. Raym. 345.

An inferior court refuses to give costs of a nonsuit; the ground is by writ De execution judicii, and not by mandamus, 1 Ld. Raym. 348.

Misdemeanors in inferior courts are punishable in B. R. Ed. Raym. 556.

Attachment against a reward for sitting judge in his own court, or for misdemeanors himself between parties. 1 Ld. Raym. 760.

In cases of negligence keeping a horse within the jurisdiction, by which he was abused, the abuse need not be flown to have been within the jurisdiction. 1 Ld. Raym. 796, 1040.

Ought to give judgment expends upon the point in inferior courts, 1 Ld. Raym. 822.

Several forts of inferior jurisdiction, causation of plea, and exempt judicium. 1 Ld. Raym. 836, 837.

The judgment of an inferior court must be entered, per eadem curiam. 1 Ld. Raym. 855.

A baldes corpus does not remove the cause, as a resdari or tertiaire do, and the plaintiff may vary in his declaration, but then he discharges the bill. 1 Ld. Raym. 1102.

Judgment of an inferior court reversed for want of the averment, that the cause was within the jurisdiction. 1 Ld. Raym. 1340.

A court held before the under-written securandum conflatulum, &c. without setting forth the cause, and well. 1 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. 1 Ld. Raym. 1555.

Inferior courts cannot grant a new trial. 1 Stron. 115, 311.

Have been allowed jurisdiction in cases similar to those where they have jurisdiction. 1 Stron. 296.

May set aside proceedings for irregularity or perjury. 1 Stron. 312.

May set aside a verdict for irregularity. 1 Stron. 499.

The King's Bench cannot reverse a fine by an inferior court. 1 Stron. 786.

The King's Bench cannot set a fine on a conviction by judges of the peace. 1 Stron. 794.

The items in a stated account need not be laid infra jurisdicionem. 1 Stron. 827.

It is not a good judgment, for an inferior court to award a tabls de circumstantes. 1 Stron. 821.

The King's Bench will not punish by attachment a contempt of an inferior court. 1 Stron. 567.

Judgment reversed, because the mayor appeared to be interested. 2 Stron. 639.

Infinitas. (Infinitis.) Hatchens; who may not be verticles 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 Inst. 6. 2 How. P. C. 434. See Ullmires.

Infinitas of actions. The lord of the soil may have a specimination against him who shall dig for the King's highway. But one subject cannot have his action against another for common insuffices; for if he might, then every man would have it, and to the actions would be infinite, &c. 2 Co. Litt. 562. 9 Rep. 113.

Infinitas, (Infinitas.) In monasteries, there was an apartment allotted for infirm or sick persons; and he who had the care or custody of this infinitas, was called Infinitarius. See Matt. Por. fab anns 1522. Thom. Stick. fab anns 1285. W. Thame. fab anns 1138, &c.

In forma process. When any man that has a just cause of suit either in the Chancery, or any other the inferior courts of record, will come both before 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 file in forma process, and he shall have counsel, clerk or attorney assigned him to defend him without paying any fees. Cowell, edit. 1727. See Pauker.

Information for the King, (Information pro Rege,) in the name that for a common person we call a declaration, and is not always done directly by the King or his attorney, but sometimes by another, qui sequitur sum pro Deo. The information was, upon the production of an action or bill or suit, the proceeding or suit, wherein a penalty is given to the party that will sue for the same, and may be either by action of debt or information. Cowell, edit. 1727.

An information may be defined, an accusation or complaint exhibited against a person for some criminal offence or injuries committed against the King or against a private person, which from its enormity or dangerous tendency, the publick good requires should be restrained and punished, and differs principally from an indictment in this, that an indictment is an accusation found by the oath of twelve men, whereas an information is only the negation of the officer who exhibits it. 3 Bosc. Abr. 164.

This difference between informations and indictments has made some men conceive, that this kind of proceeding was utterly unlawful, as not being only contrary to the original frame and nature of our laws, but also contrary to Magna Charta, and several other statutes, which require that no man may be put to inquire, &c. but upon indictment or prefentment. 3 Bosc. Abr. 165. See Sir Francis Waddington's argument, 5 Med. 536, and 1 Show. 106, &c.

But tho', as my Lord Hole observes, in all criminal cases the mod right and safe way, and most consonant to the statute of Magna Charta, &c. is by prefentment or indictment of two sworn men, yet he admits that for crimes inferior to capital ones the proceedings may be by information; and this, from the long and frequent practice, is now certainly establisht as part of the law of the land; and therefore at this day the following kind of information may be exhibited, wherever the nature of the offence deserves such a proceeding. 2 Hal. Hift. P. C. cap. 8.

I. For an offence principally and more immediately against the King, an information may be exhibited in the name of the attorney general, and such information may be filed, without any application or search of the court, and the party shall be obliged to answer the same; also the statute 4 &c 5 W. 3. which requires a recognizance for payment of costs from persons exhibiting and prosecuting informations, does not extend to informations filed by the King's Attorney general, and it is said that this statute is not applicable to such informations in question but will oblige the party to demur or plead thereon. 2 How. P. C. 360. And see Earl. 465-6. that no such information can be brought on a penal statute. 1 Salt. 372.

2dly. On application, and leave of the court, grounded on motion and affidavit of some officier, which if true, doth from its evil tendency merit such prosecution, the court allows of the filing of an information in the name of the Master of the Crown-office; and of such kind of informations there are numberless precedents in the Crown-office. 2 How. P. C. 361. 2 Hal. Hift. P. C. 161.

3dly. Whereby many penal informations the prosecution upon them is by the acts themselves limited to be by bill, plaint. information or indictment, there, without doubt, the prosecution may be by information as well as by any other of these methods; also of common right such information, or an action in the nature thereof, may be brought.
brought for offences against statutes, 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 qui tant, or Actions on penal statutes.

44th. Informations or other Knavery may be considered as libels, with leave of the court, for ufurping privileges, 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 usurpation, &c.

1. In what cases an information will lie.

2. Of filing an information; it shall be lawful to proceed therein, and the praemunire made relative thereto by statute.

1. In what cases an information will lie.

Here we shall lay down what hath been collected by serjeant Haselton, and is, as he says, every day's practice, agreeable to nother precedents, viz. either in the name of the King's Attorney general, or of the Master of the Crown-office, to exhibit informations for batteries, cheatings, defrauding a young man for woman from their consent, in order to marry them against their consent, or for any other wicked purpose, spiritizing a child to the plantations, refining persons from legal arrears, perjuries, and subornations thereof, forgeries, conspiracies, (whether to accuse an innocent person, or to impose upon a certain fact of lawful traders, &c.) or any other vitiations to be unlawfully caused, by cauing persons bribed for that purpose to be sworn on a tals, and other such like crimes, done principally to a private person, as well as for offences done principally to the King; as for libels, fictitious words, riots, false news, and such disquieting suades, (as in not repairing highways, or embrocating them, or flooding a common river, &c.) contempts, 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 commission to the oppression of the subject, making a return to a monies 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.

Bac. Abr. 166. 2 Hawk. P. C. 265. and several authorities 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, &c. concerning his said office of justice of the peace, and the executing thereof; and upon the committer to this information it was argued, that it would not lie for scandalous words spoken only of a particular person, because he might have an action on the cafe to recompense him in damages; tho' it was admitted, that such a proceeding might be warranted for libels, or for differing defamatory letters, because by such means the public peace might be disturbed, and discord sowed amongst neighbours, which might at last be a public injury, but that there was no such mischief in the present cafe. On the other side it was infuted, that this information was founded on sufficient matter, because this prosecution is not only as it respects the person of Sir John Kay, but it concerns the public magistrates, and one who is subordinate to the government, and therefore 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 denied but that words reflecting on the public government are a reproach to the public magistrates, and on this reason the court held that an information would lie, and thereupon gave judgment against the defendant, and fined him an hundred marks. Carli. 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, and whereas the King by indenture, &c. granted, &c. licensed the excise of Leicet. A. & Ilke., and Woodm., to A. & B. and renders 118l. 5s. per annum, money, &c. that the defendants and others ign't, &c. forfals. & sedatives falsificatorum & conspiratorum et ad terrorm & repandam forsaltas excise præcl. &c. and many other informations touching the defraying the excelnent, depopulation, depredating the King's revenue of excise, pulling down the excise-house, raising a tumult amongst the poor people, &c. But the jury that were to try the issue were unwilling to find this matter, doe' expreffly proved, fearing it might be considered no less than treachery, and they only find that such and such of the defendants illegit. & sedatives & afflammator. & illegal, forfals. & sedatives falsificatorum & conspiratorum ad terrorm & repandam forsaltas Dom' Regis excise præcl. &c. treas præcl. attorn. gen' Dom' Regis, &c. & quod simum altum mater. in informatione contentum find them Not guilty, j. f. Not guilty of the whole. It was moved in open judgment, that there is no offence at all found; for to conspire to depopulate the King's farmers is no offence, for it may be done by lawful means; and that they are laid to be the King's farmers is but a description of their persons, not because they were at the King's service, but the conspiracy struck, and the afflammator is not the charge, for then it ought to have been laid as forfals. & rufufs, but only leading to the conspiracy. It was answered by the King's counsel, that the illegit. afflammator is an offence against the law, as it is properly and fully laid could be; and as the forfals. is where the intent to commit a riot, and forfals. for a rout; but an assembly may be illegal and punishable, and yet the intention of that assembling may be good, as 21 Hen. 7. Br. tit. riot. 1. per Fenius, as if men meet to prevent the breach of the peace between A. and B. A. going to market, and B. threatening to beat them; and such an assembly no properer epithet could be given than illegit., but besides, all manner of combinations and confederacies are unlawful without respect to their end, 27 El. 4. Mor. Lord Gray's coffee, and Cre. 7. the cafe of the puritans petitioning; but this conspiracy being to depopulate another man, is unlawful in its end; and to answer the objection that hath been made, it might be said, that although the depopulating of another man may be by lawful means, and the consequence of a lawful act, yet that is because it is not in the intention of the party, but it is damn. a sse. &c. for a number of men to design and to conspire the depopulation of another man, it may be lawful, for there the damage to the third party is their own aim and end, and it is as well against the law of charity and common society; and this might be said if there were nothing of the King's farmers in the cafe; but here the indention to the whole charge in the information is, that the defendants, &c. Machinantes de fraudare & deprecare dictam Dom' Regis ren. de reddito suo præcl. & præcl. falsificat. & depraer. depre. & depraer. did fo and so; now this inducement in the whole is applicable to every branch of the charge, and the jury having found those charges as they are laid, forfals. &c. forma præcl. and they have found, that it was done by the defendants, machinantes, &c. which makes it in their intention to frustrate at the King's revenue, as well as in consequence. It was also urged for the defendants, that for a bare conspiracy, without any act done in prosecution of it, no information would be brought; but curia om. for though there must be some fact to be as evidence of the conspiracy, as 9 Ca. Peuler's cafe, yet it is the conspiracy that is the crime, and that being found, it is enough. It was also urged by the King's counsel, that the mods. & forma præcl. in the verdict extends to all the charges of the act that were done in prosecution of this conspiracy, and the accessory, and the present mater. &c. extends to the distinct charges of facts that have no relation to this conspiracy: But Hindes. forfals. said, the mods & forma præcl. could by no means make the verdict comprehend other matters of fact than were expressly found. It was moved by the King's counsel, that they might inform the court of the 5. robbed farmers

4
necessity of this conspiracy, and how it was proved to be upon evidence to the jury that tried it, to aggravate the offence, and without the direction of the court to increase the fine; and the case of Machin and Tolly was cited, where a battery being found by nisi prius against them, the court informed themselves of the heinousness of it by affidavit, and thereupon vacated a fine that was set in a judge's chamber, and set a fine higher than the principals. But in this case the court did not act in a way to let us in the matter of, which the jury has acquitted them, by suffering affidavits to be made; but in Machin's case the jury found the defendants guilty of the whole; and what needs aggravation of this, which appears so foul as it is found? The court after unqualified evidence given for the King, though as to the offence found there was some variety of opinion: Wintham distinguished between a confederacy and a conspiracy, that for a conspiracy there ought to be some facts done in execution of it; so an indictment cannot be maintained of a man as a common thief, or chemacher, or forefather, without laying some facts of those offences; and in this he grounded himself upon 29. S. 45. but he held, that here the defendants are found guilty of a confederacy, which is not a word of art, but may be expressed in other terms, and such an offence will this matter stand amount unto; he held the information as to that was not good enough; he wanted vi et armis; as to all the subsequent facts, he held the defendants acquitted; and as to the intention of defrauding the King of the rent, &c. he held the acquittal did extend to it, because they were acquitted of the facts to which that was to be applied; but as to the confederacy the verdict has found enough, and though it were to a private end it was unlawful; but here it is more, and that which will aggravate it highly; for the customers of the King are publick persons, as the King's revenue is of a publick concern; and it is felt forth in the information that there were farmers of a very great value; it is one thing to beat a private person, and another to beat a publick officer, or the King's servant; if a man should chicke the thief that has the character of a publick officer, it would be a high offence. Twifden held, that vi et armis was not necessary, and that they were found guilty of an unlawful assembly, and in that my L. D. Ch. Jull. concurred; as also that the intention of depraving and depriving the King of his fair rent is implicitly found within the majus & forma prout, &c. for so shall the machinazzi, &c. be applied. Twifden and Keeling concurred, that for a conspiracy alone, without any prosecution, information lay; and they all agreed, that the King's revenue being concerned did highly aggravate the offence; 2 H. 7. 306. were cited, that for maintenance of that a monk should be able to contract, and probi omnium de Dale should be a corporation. Lord Chief Justice cited Old Margo Charta where there is a statute against such as should undervalue land in the King's hands. So judgment was given for the King; but the settling of the fine was refused, because they would consider as well qualitatem delinquens as quantitatem delicti. In this case were cited 3 Ed. 3. 19. 43. S. pl. 38. afterwards, the same term, Starling was fined 300 marks, and the rest of the brewers 100 marks apiece, but with some apology by the court for the smallness of the fine. 1 Lev. 125. 1 Sol. 17. 1 Keb. 650. Hil. 15. 18. Car. 2. in B. R. Rex v. Starling, and other brewers in London.

A coroner having sworn the jury to inquire of the death of one tupped a fide de, and finding the evidence very strong took off some of the impeif; and tho' it was not an unlawful assembly and imployed for wicked and acquired, and the who discovered to be a clear.

An information was granted against one for counterfeiting or pretending himself to be bewitched by a peer wherein he was accused and indicted, and acquitted, and the who discovered to be a clear.

An information was filed against a grocer for suffering one taken upon an oxom, espied, to go at large. 12 Mad. 434. Mlb. 13 W. 3. 2 Ann.

An information was filed against certain perfons for that they, as enemies, &c. to the government; hired a boat during a war with France, in order to go thither, intending to aid and affift the King's enemies, though they were not the King's enemies, only interested. Stin. 527. Pajeb. 8 W. 3. 3 B. R. The King v. Cooper and al.

Upon a motion to file an information against a justice of peace for sending the protector to the house of correction without sufficient cause; upon a rule to file as he thought that no other man, his matter complained, to the defendant that his bail warrant was false and gave his (the master's) horses too much corn; but the court holding this not a sufficient cause for sending a man to the house of correction, leave was given to file an information. 8 Mad. 45. Pajeb. 7 Geo. The King v. Okey.

An information was filed against one for killing a negro man's dog, setting forth, that Lord S. was riding in the villa of D. in cam. Middlefie. and that his greyhound being then and there following him, the defendant drew his sword, and then and there killed the dog. 12 Mad. 377. Pajeb. 13 W. 3. The King v. Golambwe.

An information for an assault and battery of one making use of locks in the river Thames to the obstruction of navigation. 12 Mad. 615. Hil. 13 W. 3. The King v. Clark.

An information for a scandalous narrative licensed by the defendant, speaker of the house of commons, being Dan- gerfield's narrative, reflecting on a nobleman, (the E. of Peterborough;) the defendant pleaded, that he was set by in order of the house of commons, and desired judgment, if this court will take consufnce of it. The Attorney general demurred, and afterward the defendant pleaded the common plea, quad non volter contender cum Domino Rge, and was fined 1000. Consal. 18. Pajeb. 2 Jar. 7. B. R. The King v. Williams.

Leaves was given to file an information against the defendant, that he had agreed, for a justice of peace, concerning his office and the execution of it; for it glances on the government, and defendant was fined 1000. Carib. 14. K. v. Darby.

In an information for spiriting away a child, and carrying him to Jamaica; Pemberton Ch. Jul. deliver'd 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, he ought to be bound by a justice of peace, and for a reasonable time. Stin. 47. Pajeb. 34 Car. 2. The King v. Williams.

Leaves was given to file an information against the defendant, by whom the plaintiff's wife was inveiglied away, and who procured merchants and tradesmen to sell goods to her, in order to saddred the husband with the debt, he agreeing with the sellers to deliver the goods back again. 12 Mad. 544. Pajeb. 13 W. 3. Poole v. Thorn- card.

Leaves was moved for to file an information against the defendant for these words spoke of a justice of peace, viz. He is an old rogue for sending his warrant for me. Hlt Ch. J. said, that he defered to be bound to his good behaviour, tho' it be not proper for that justice to do it, but rather to get one of his brothers to do it for him; and leave was denied; the court directing them to go by way of indictment if they would. 12 Mad. 514. Pajeb. 13 W. 3. The King v. Lane.

On motion for an information, it appeared, that the defendant convicted to get a young lady out of the court, and he got the money, by which means, he got the lady, and that a coach, &c. was prepared, into which the voluntarily went, and was carried into Stin, and there married. Stin. 1167. Hil. 12 Geo. 2. Rex v. Lord Officer and al.

The court was moved for to file an information against a chapman, for refusing to collect money on a bill for fire, according to the act 4 Ann. cap. 14, and the cause of informations granted for not burying in woolen was cited.
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 those exhibited in the name of his Majesty's Attorney general, without first making a rule on the persons complained of to file cause to the contrary; which rule is never granted but upon motion made in open court, and grounded upon affidavit of some felon, worshiper, which, if true, doth either for its enormity or dangerous tendency, or other such like circumstances, seem proper for the most publick prosecution; and if the perfon, 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 no 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 flew good cause to the contrary, as that he had been long absent from the place, or that, if he was there, he had been in the baggage of a man and horse, &c. 2 Haw. P. C. 262.2

Similarly, the factum 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 dum est hic intelligi & informati in the beginning of every distinct clause, if the want of them may be sup- posed by a natural and easy connotation. See 1 Hawk. 170; 3 Sumn. 78; 4 Rav. 322.

In an information against Roberts the ferryman over the river Mercy, which parts Angliae from Cornubia in Wales, it was laid generally, e.i. That this was an ancient ferry time out of mind, and that i.d. to procure a number of men and horses, &c. 20 cattle, 2 d. for 20 theft, &c. That Roberts being the common ferryman, between the 7th September anno 2. and the day of exhibiting this information, injuriae, op- pressione, &c. &c. &c. against divers persons to the Attorney general, proved thereby, Sir John Daniell juratus fammum ex silentiis aut

tiquam ratam & praeitis pro pugilia & transformatione fas & aversionem foramin, violadict., pro pugilia & transformatione causas vertit per eos qui dixit 2 d. & pro quilibet 22 catalis 2 f. & se secunda ratam predicti per majest. vol minoris nuncios aversionem, &c. The defendant was found guilty, and it was moved in right of judgment, that the information was too general, because it did not allege that any particular person, or any certain number of cattle, were ferried over within the time laid in the information; neither did it mention any particular person from whom the extorted rates were taken, which ought to do, that the single offence might certainly appear upon the courts and records. The whole court was of that opinion; and per Holt Chief Justice, in every such information a single offence ought to be laid and ascertained, because every extort from every particular person is a separate and distinct offence; and therefore they ought not to be accumulated under a general charge, as it is done in this case, because each offence requires a separate and distinct punishment, according to the quantity of the offence; and it is not possible for the court to proportion the fine or other punishment to it, unless it is distinctly and certainly laid. 3 Car. 226. The King v. Roberts.

As to the proviso made herein by statute, by the 4 & 5 H. & M. cap. 18. section, That divers malicious and contentious persons had, more of late than times past, procured to be exhibited and prosecuted informations in their Majesties courts of King's Bench at Westminster, against persons in all the counties of England, for trep- idities, batteries, and other misdemeanors, and that the parties so informed against had appeared to such informations, and pleaded to issue, the informers had very seldom proceeded any farther, whereby the persons so informed against had been put to great charges in their defence; and also at the trials of such informations verdicts had been given for them, or a null peremptory entered against them, they had no remedy for obtaining costs, against such informers; it is enacted, "That after the first day of Easter term in the year 1623, the clerk of the Crown in the said court of King's Bench for the time being shall not, without express order to be given by the said court in open court, exhibit, receive, or file any information for any of the causes aforesaid, or issue out any process thereupon, before he shall have taken or shall have delivered to him a recognizance from the person or persons prosecuting such information to be exhibited, with the place of his, her, or their abode, title or profession, for being entered as the information or informations or is or are exhibited, in the penalty of twenty pounds, that he, she, or they, shall be unable to prosecute such information or informations, and abide by and observe such orders as the said court shall direct; which recognizance the said clerk of the Crown, and also every justice of the peace, sheriff, or county framerchish, or town corporate, (where the cause of any such information shall arise,) are by the said statute impowered to take; after the taking thereof by the said clerk of the Crown, or the receipt thereof from any justice of the peace, the said clerk of the Crown shall make an entry thereof upon record, and shall file a me- morandum thereof in some publick place in his office, that all persons may refer thereunto without fee: And in case any person or persons, against whom any information or informations for the causes aforesaid, or any of them, shall be exhibited, shall appear thereunto, and plead to issue, and that the prosecutor or procurator of such information or informations shall not at his and their own proper costs and charges within one whole year next after issue joined therein procure the same to be tried, or if upon such trial a verdict paxi for the defendant or defendants, or in case the same informer or informations shall be proved to be false, the said court, and the said fair cafs the said court of King's Bench is authorized to award to the said defendant or defendants his, her, or their costs, unless the judge, before whom such information shall be tried, shall at the trial of such information in open court certify upon record, that there was reasonable cause for exhibiting such information; and in case the
the fact of the informant or informers shall not, within three months after the fact costs taxed, and demand made thereof, pay to the said defendant or defendants the said costs, then the said defendant and defendants shall have the benefit of the said recognizance to compel them thereunto:"

"Provided, That nothing herein shall extend or be construed 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 Mallet of the Crown-office."

In the construction hereof it hath been held, that if procès be filed on such information before such recognizance is given as the statute directs, the same may be for slide and discharged on motion. 2 H. 3. P. C. 263.

2. That this statute extends to all informations, except those exhibited in the name of his Majesty's Attorney general, so 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 first instance come within the words "troffers, &c." yet being also intended to punish a mischief, and also as the proceedings therein may be as vexatious as in any other, the same is within the purview of the statute, which being a remedial law, shall receive as large a construction as the words will bear. Gough, 503. The King v. The town of Hertford. 1 Suit. 336. 3 H. 3. P. C. adjudged.

3. That no costs can be had on this statute on an acquittal at a trial at bar, not only because the clause that gives costs, unless the judge certify a reasonable cause, seems only to have a view to trials at nisi prius, but also because a cause, which is of such consequence as to be thought proper for a trial at bar, cannot well be thought within the purview of the statute, which was chiefly designed against trifling and vexatious prosecutions. 2 Hawk. P. C. 263.

4. That if there be several defendants, and some of them acquitted, and others convicted, none of them can have costs. 1 H. 3. P. C. 131.

5. That wherever a defendant's case is such as authorizes the court to award him his costs, he has a right to them ex debito justitiae; for it seems a general rule, that where judges are imposed by statute to do a matter of justice, they ought to do it of course. 2 Chanc. Cases 201. 2 Hawk. P. C. 263.

By the 9 Ann. cap. 20, it is enacted, "That in case any person or persons shall usurp, intrude into, or unlawfully hold and execute the office or franchise of mayor, bailiff, portreeve or other office within a city, town corporation, borough or place in England or Wales, it shall and may be lawful for the proper officer of the court of Queen's Bench, the court of felions of counties palatine, or the court of grand felions in Wales, with the leave of the said courts respectively, to exhibit one or more informations or informations in nature of a quo warranto, at the relation of any person or persons defining to be or to profligate the same, and who shall be mentioned in such information or informations to be the relator or relators against such person or persons for usurping, 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 respective courts, that the several rights of the respective persons to the said offices or franchises may properly be determined on one 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 the said rights to such offices or franchises, and such person or persons, against which such information or informations in nature of a quo warranto shall be filed or profligated, shall appear and plead, as of the same term or session in which the said information or informations shall be filed, unless the court where such informations shall be exhibited, do plead; and such person or persons, who shall sue or prosecute such information or informations in the nature of a quo warranto, shall proceed thereon with the most convenient speed that may be." It is therefore held, 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 cases 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 and from any of the said offices or franchises, as to fine such person or persons respectively for his or their usurping, &c., and to give judgment that the relator or relators in such cases 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 costs to be levied by capias ad satisfac- tionem, fori facias or elegiac.

"And it is further enacted, That the statute for the amendment of the law, and all the statutes of Tuscaloosa, shall be extended to informations in nature of a quo warranto, and proceedings thereon, for any of the matters in the said act mentioned."

The defendant was moved against a clerkman for perjury and his admission to a living upon an affidavit that the presentation was sacramental. But the court refused to grant it, till he had been convicted of the felony. Sm. Min. 4 Geo. 1. Rex v. Lewis.

Defendant came up on a baldes corpus from the Savoy, to which it was returned, that for several years past all the Africans 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. The defendant pleaded nulla est cogitation. The court discharged the defendant for the insufficiency of the relator, and ordered an information against the colonel who had the men, and the keepers of the Savoy. Sm. 404. Mich. 7 Geo. 1. Rex v. Drew.

On a motion for information for a libel, in advertising that one Mazick an apothecary had perfonated Dr. Cresw a physician, and wrote and took his fee (which the apothecary did not pretend to deny), the Chief Justice declared, that though truth be no justification for a libel, as it is for defamatory words, yet it will be sufficient cause to prevent the interference of the court in this extraordinary manner, and induce them to leave it to the ordinary course of justice before a grand jury. Whereupon the information was discharged. Sm. 498. Hil. 8 Geo. 1. Rex v. Bickerston. See 14 V. Ad. Or. Information, &c. for informations in libel, &c.

Information non sinit, or more properly, non sinit informator, is a formal answer made of course by an attorney who is commanded by the court to say what he thinketh good for the benefit of his client, who being not instructed to say any thing material, faith, He is not informed; by which he is deemed to leave his client unden- fended, and to judgment palpeth for the adversary party. Cowell.

Informator, (Informator.) Is any one who informs or procures in any of the King's cases of Common law, or Exchequer, King's Bench, Common Pleas, Assizes or Sessions, that he offend against any law, or penal statute: Those in some cases are called promoters; the Civilians term them declarers. Cowell.

Infodictiatis, Is one part of the digests of the Civil law, an exposition of it under the title of Rerum et Principis, by Robert Stephom, in a chronicle of the monastary of Peterborough, &c. he lived in the reign of Hen. 3, who tells us, that Beddid, an abbot of that monastary, who died in the year 1194, describes several law books, among the rest, the Institution & Jusdictiatis, with the Authentic, the Institutionem, the ok Diget, &c. Cowell, edd. 1727.
70. The Court of Chancery, and its Jurisdiction.}

In the Court of Chancery, a writ of certiorari may be had. This writ is a writ of command to the sheriff of the county to return the deponent, whom the plaintiff desires to be examined, to the court. The deponent is required to give a full and true account of the facts and circumstances relating to the case. The court may then hear the case, or may order a further examination. The deponent is liable to answer to the court for any false or fraudulent statements made in the writ or in his answers.

In the Court of Chancery, the jurisdiction extends to all cases in equity, including cases of trust, chancery, and admiralty. The court has the power to grant injunctions, to compel performance of contracts, and to make orders for the protection of the parties. The court also has the power to decide questions of law and equity, and to interpret statutes and contracts.

In the Court of Chancery, the procedure is different from that in the Court of Common Pleas. The court has the power to try cases in equity, and to grant relief to the parties. The court also has the power to grant injunctions, to compel performance of contracts, and to make orders for the protection of the parties.

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null but inhabitants of ancient meffages could be initi-
ted to it; but here his otherwise appointed by the grant, and
every inhabitant that has a right by deed, as in the original grant. Mich.
to Geo. 4. Ald. 65. Wright v. Hobart.

Inheritance, (Hereditas,) is a perpetuity in lands or
tenements to a man and his heirs; for Littleton, b. 1,
cap. 1. hath these words: This word inheritance is not
only understood where a man hath in his fee-dominion
and tenements by descent, but also every fec-
fimple or fee-tail that a man hath by his purchase, may be
faid to be by inheritance, for that his heirs may inherit
him. Several inheritance is that which two or more
hold severally; as if two men have land given them,
to them, and the heirs of their two bodies; these have joint
eredit in their lives, but their heirs have several
inheritance. Kitchen, fol. 155. See Deferent,

Hindwards. One attending the King in
Hersford and Cambridge ftries. Damfeyk, Cowell, 1727.

Inhibition, (iubitibus,) 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 it putth
prohibition and inhibition together. Inhibition is most
commonly a writ flinging out of a higher court Christian to a
lower and inferior, upon an appeal. Stat. 24 Hen. 8,
cap. 12, and 15 Cor. 2, cap. 9, and prohibition out of the
higher court to the inferior, or to an inferior tem-
poral court. Cowell.

An inhibition is either bonum or jurius; iis ne vitiation
non sit in tribunacum iuris, vel aliquam jurisconsultum ecclesiasticum
contentiun vel voluntatem iuris. Thus, when an arch-
bishop vifs, he inhibits the bishop, when a bishop vifs, 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 bill parfis is
vifited, and then it is entered mo/a parochia rcfiat vi-
andas, for he may hear of no faults till he come to the
very last falf. 3 Sal. 201. cites P. 13. Lanne v.
Dunfey, 1720.

Now after such an inhibition upon a metropolitical vi-
fication, if a lape happens, the bishop cannot inhibit, be-
cause his power is suspended, and therefore the arch-
bishop is to inhibit; for it is not only penal in the bishop
so to do, but the inhibition itself is void, because it is
an act of jurisdiction from which he was suspended. 3
Sall. 201. p. 2.

But it may be a question, in the cafe 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 interest, but by way
of dower, and in law, the negligence of the patron; this
appears, because the patron may premise at any time after a lape, and before collation. 3
Sal. 202. 5. 3.

Inhib. This word was neither interpreted nor men-
tioned in any Glossary before the publication of Kenne's
Parochial Antiquities. It properly signifies any corner or
part-out of a common field ploughed up and fowed (com-
monly with oats or tares,) and sometimes fenced off
with a dry foot hedge, within that year wherein the re-
fit of the fame field lies fellow and common. It is now
called in the North an inneh, and in Staffordshire a
Mitchell or Hinker. It is three rows made from the Saxon
incho, a field or meadow, or rather inne, within, and
hake, a corner or nock. The making of such inhoks, or
separate inclosures by any one lord or tenant, was a pre-
judice to all who had a right of it. — Prater
Walterus Primer Berecfriffrf fieri seifi quidam inheo in
camp. viroavelli utriusque, &c. Prater, in loc. citro
fubtiffimo priuatis, fub fubtili infcribatur officio diecet fi de commune
universis vicris vofi feifi quidam inhebo in campo de
Dunlafhe for defiijjij & voluntarie pririi & covenantes de
Cold Norton. — Unde gurnudum funtum & illorum uni-
am victimum treffen in hehbo in campo de
Dunlafhe, p. 258. This trespass or encroachment was expressly
prohibited in some charters. — Hec rationum quod Dominus
haym nec gallurae feiparam faciat ab hominibus infra

Campus warbati. Ibid. pag. 456. And therefore
no such trespass is now made without the just consent
of the commons, who in most places have their
lands by lot in the benefit of it; except in some manors where
the lord has a special privilege of doing. Cowell, edii.
1727. See Kennet's Glossifer.

Injunction, (iuvinius,) is a writ granted upon an
interlocutory order in Chancery, sometimes to give per-
fusion of law, if one man brings an action against the
other; and sometimes to the King's ordinary court, and
sometimes to the court-christian, to stay proceedings in a
cause upon requisition made, that the rigour of the law, if
it take place, is against equity and conscience in that cafe. Cowell. Hift. Symbol. part. 2. tit. Proceedings in Chan-
cery, 1727.

An injunction is a prohibitory writ, restraining a
perfon from committing or doing a thing, which appears
to be against equity and conscience. 3 Bac. Abr. 172.

1. The several kinds of injunctions, and when to be
granted.

2. It has shall be a breach of an injunction, and how
punished.

3. How an injunction shall be diffiffed.

1. The several kinds of injunctions, and when to be
granted.

Injunctions issue out of the courts of equity in several
instances; the most usual injunction is, to stay proceedings
at law; if one man brings an action against the other, and a
bill is brought to be relieved either against a penalty,
or to stay proceedings at law, or some equiv-
cular circumstances, of which the party cannot have the
benefit at law; in such case the plaintiff in equity may
move for an injunction either upon an attachment, or
praying a further time to answer; or for it being suggested in the bill, that the suit is against
conscience, if the defendant be in contempt for not an-
swering, or pray time to answer, it is contrary to con-
science to proceed to law in the mean time; and there-
fore an injunction is granted of course; but this injunc-
tion only stays execution touching the matters in question,
and there is always a clause giving liberty to call for
a plea, to proceed to trial, and for want of it, to obtain judg-
ment; but execution is stayed till answer or further order.

Where tenant for life is committing wafhe in cutting
down young timber, or breaking up or plowing
ancient meadow or pith, or doing other waft, the ten-
in in tail shall have an injunction upon a certificate
of filing of the bill, and shewing an affidavit of wafhe com-
mitted, and this tail answered and further order; for wafte
once cut down cannot be set up again. 3 Bac. Abr. 173.

So if a man be tenant for life without impeachment of
wafte, with remainder to his first and every fon in tail,
with all the benefit of that clause without impeachment of
wafte, he may fell timber, and alter any rooms of
the house at his pleasure; yet if he should pull down
the house, or any part of the buildings thereunto belonging,
wast not committed, but not if he pull down the house to
build; for tho' the clause without impeachment of wafte
gives an absolute property in the timber, that he may do
derwith what he will, yet he is but tenant for life of the
lands and houses; and therefore if he pull them
down in order to vex a fon that has disobraied him, he
must make an ill confession, and cannot or be restrained in


Afo it every day's practice to grant an injunction
for building on another man's ground, and such injunc-
tion shall go to stay that new building till answer
and further order; and for the ease of the thing up ancient

So injunctions have frequently been granted to stay
the printing and selling almanacks, bibles and other
books, in behalf of patentees and owners of such books:
but
caufe that court cannot compel to make an adequate
settlement or provision for his wife; but if the executoi
be ordered by such a time to bring in the money, which
he neglects to do, no injunction will be granted, becaufe
the bill might have been brought only for delay, and the
executor might then deliver a certificate of his own bill.

There are other injunctions which are never denied:
as in an ejectment where the party agrees to give judg-
ment in ejectment to prevent trial, to give a release of
errors, and to confess not to bring a writ of error, and
to this it is sometimes added to deliver peremptorily as
the court upon hearing shall direct; this forwards the
defendant at law, and he could have no more if he were
to proceed to trial. 3 Bac. Air. 175. Gilb. Hift. Chan. 175.

Where a mortgagee brought a bill to foreclose, and
panding the fuit an advowson appertaining to the mortga-
ged manor became void, and the mortgagee being hinder-
red from preferring, 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 Gar-
roid, and the defendant was her executor, who being
served with a copy of the bill of revivor, and my Lord
Keeper's letter, woid not appear, being in privilegie;
and upon motion an injunction was granted, though the
cause was not revived; and the cafe of Armington and
Coffin was cited, where he pleaded determined the
plaintiff had an injunction on motion. Air. Eq. 285.
Dale. Hamilton venus Macclefield.

Where the Lord Wharton had an injunction to quiet
him in the possession 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
revivor was brought, and before the time for answering
was out, or the cause revived, the plaintiff moved for
an injunction to stay 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 Chandlimes would work out the mines; and
an injunction was granted, though the cause was not re-


2. What shall be a breach of an injuction, and how
puniflied.

If there be a fuit in equity concerning title to a clofe,
and thereupon an order is made, that the defendant fhall
fiffer the plaintiff to enjoy the clofe till, &c., and not
withstanding the date of the original peremptorily upon a
bill in his cafe, this is no breach of the injuction; for
the common was in quefion by the bill. Lane 96. Ben'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 Chan. and the quefion was, whether
he could after take out execution without a fiere
ficius; and it was held, that he could not: fef, becaufe
the Common law court cannot take notice of
injunctions. 2dly, Because it had been no breach of the
injunction to have taken out a writ of execution
and to have continued it by sicemna non muta
brevi. 1 Salk. 322. Booth and Booth. 6 Mod. 288.
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 ferved the execution having,
as was alleged, for the better performing their duties
on the other damages, and the officer took the father
the pater fore good security with two fureties; fo
where a husband fues in the fpiritual court for a le-
age given his wife, an injunction will be awarded, be-
Vol. II. N°. 94.
maze, that the defendant came into possession by course of law, and the bailiffs were legal officers, who, if they did anything amiss, the party ought to take his remedy at law against them, and the defendant ought not to be answerable for their misdeeds. Indeed, the defendant held it as his right, and he thought it an idle prac-
tice in the court to put a thief to his oath to accuse himself; for he that has stolen will not flick to overthrow it; and therefore in odium fojolatoris the oath of the party injured should be a good charge upon him that has done the wrong. 2 Vent. 197, Children v. Sarelly.

As concerning the breach of injunctions, it hath been of late practiced to commit the party on affidavit of the breach, and personal notice given to him, but never on notice to his clerk; whereas by the ancient rule where a man is guilty of the breach of an injunction, on an affidavit made thereon, the plaintiff's clerk in court brings out an attachment against him of course; he is arrested thereon, gives bail to the sheriff, enters his appearance with the register; 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 and be examined, it is a motion of course to examine him in four days, or hand 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 court may refer it to a smaller, 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 it on for the judgment of the court; and if the court is of opinion that he is guilty of the contempt, he must hand committed, and pay the costs; but if the court is of a contrary opinion, (as it sometimes happens) he is acquitted with costs.


3. Hrn'on an injunction shall be differed.

The methods of disobliging 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 disoblige it, and serves it on the plaintiff's clerk in court; this order takes notice of the defendant's having fully answered the bill, and also his having paid the whole equity thereof, and been regularly served, the plaintiff must swear he caused at the day, or the defendant's counsel, where there is no probability of flowing cause, may move to make the order absolute, unless cause, fitting the court.


If the plaintiff may swear 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 release of errors, and consenting to bring no writ of error, or to give security to abide the order on hearing, or the like; and to this order is generally added a clause, that the plaintiff shall pay his cause to a hearing.


If the plaintiff swears cause upon exceptions filed, he must procure the report in four days of the insufficiency of the answer; and if the motion be made at order of the last seals 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 next term, which 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 case 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 before his injunction to stand difollowed 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 take up too much time.


If the party shall make a new affidavit of a motion of course to disolve the injunction on the answer being reported sufficient; but yet the plaintiff may swear 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 plaintiff may have good cause on the merits for continuance 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 disolve the injunction, on the answer being reported sufficient; because, as this is a motion of course, the party shall have liberty to speak to the merits; but he may have liberty on notice given.


If the plaintiff who hath an injunction dies pending the suit, in infinites the whole proceedings are altered, 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 disolved; and as this is never denied, so if the suit is not revived, the party takes execution. There are some infances where a plaintiff may move to revive his suit; but as that is a matter, he has rather the granted, especially where the injunction hath been before disolved; but where a bill is dismissed, the injunction and every thing else is gone, and execution may be taken out the next day.


For more learning on this subject, see 3 Bac. Abr. and 14 Vin. Abr. tit. Injunction.

Injury. (Injuria.) 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 the law, hath injury to none. 4 Rep. 124.

Injunction. (Injunction.) Is a reflection of one outlaw, to the protection of the law, or to the benefit or liberty of a subject. From the Sax. inungione, i.e. Injungere, Et ex fejium legum particeps adeo coepit reddat, at tempomatius assumere. L. L. Canuti Reg. par. 1. cap. 2.

Injunction. To refore to the benefit of the law—Edger, four winters ad eam a Scotia, & Rex eam inlagavit & sones bames fast. Annal. Waver, sub anno 1074.

Inlag. or Infulness. (Inlagatus, vel homa sub leges.) Signifies him that is in some frank-pledge, and not outlawed. So Bracton's words in trad. cap. 11. Minor veres, & qui infra autem duodecim annorum facit, ulagari non potest nec extra legem ponit, quia ante todes autem non eft legibus aliqua in decemna, non magni quum facint, quaui ulagari non potest, quia leges non sub leges, i. inlagavi Angles, i.e. in francipe frigio dextra decentia magnus duodecim annorum & ulterior, sic. Inlag. sitignificat hominem sublegatis legi. Flac. lib. 9. cap. 47.

Inland, (Inlandum, terra dominicalis, pari maneri dominica, terra interiori.) For that which was let out to tenants was called Inland. In the extent of Britten.

The Britten, or Kantet; thus, To Wulffige that inland, to Eiluge that inland, i.e. Lega terrarum dominicali Wulfges, tenementales Allege. Thus enligieth by Lambard, Th Wulffige (I give) the inland or demesnes, and to Alleuge the outland or tenany. Ex dens Wil. de Efton 50 acres de inlands fun. Rot. Chart. 16 Hen. 3. m. b. This word is often used, or hereby we That inland, for the lands of byland or hereditary 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 mansion-house, as within the view thereof, and therefore they kept that part in their own hands, for the support of the family, or of the tality. The Normans afterwards called these lands Terra.

The Normans afterwards called these lands Terra.
INN

dominated, the demains of the lord's lands: The German
Terras incunabulmon: The Tudors, Terras curiar
as infra curiam, Lands appropriated to the courts, house of the
lord. See Annaler's Glossary in Ireland.

See Latinills of exchange.

Innata, Demembre or inland, to which was opposed delantant, land tenanted or eaten. Cottlei, ed. 1727.

Innata, From the French edlais, intangled or inti
ated; the knot we may read in the Champion's oath.
Cott. Inf. 2 p. fol. 347.

Incapac. When a delinquet has falsified the law,
and is again retna in curia, he is said to be incapac. Sunt
alia quaedam passio Christianitatis in quibus Rex partem
hoc habet, eal. Rex partitur ut qui in ecclesla securit
hominem, et amendum victim, prima episcopi & Regi
primo nutusius fuis reddet, & ita se infeget, decins
comparat de pace ecclesl, 5 lib. &c. Leg. Hen. 1. cap. 1.

Inmates, Are those that are admitted to dwell jointly
with another man, tho' in several rooms of his mani
house, pulling in and out by one door, and not being able
to maintain themselves; which are inquirable in a deed.
Kitchin, fol. 45. where may be read who are properly
inmates, and who not, in the intendment of law. Cottell.
See Cottage.

Inanum for Baudium, A pledge. Inanam non
capavit nisi damnationem offendens, De Cange.

Innaturalitas, Unnatural usage. — Et ibidem
imp reptor certa omni populo congregato splenditi et
sensit omnibus innaturalitatem & insecuturam ad imprudens,
quae Rex Francie ci servet, & ibdum Regem Francie

Intrant, Lands recovered from the sea by draining:
as in Romney-Marsh, old records make mention of the
inings of archbishop Becket, Baldwine, Boniface, and
Beokham; and at this day Eldeerton's inings, &c.

Innata, An innelore: From the Saxon innan, innu.

In an ancient charter mentioned in Spelman's Glossary we
read; Sciati me concusif for tumiam seculam in Beren
Borrichum, & umum erum & duo innocens nut innocentis,
voit. inobiles, &c.

Innotescimus, Letters patent so called, which are
always of a charter of feoffment, or some other instru
ment not of record, and so called from the words in the
conclusion; Innotescimus per prsestantis. An innotescimus
and sidimus are all one. See Page's cafe, 5 Rep.

Innoticie, To clear one to a fault, and make him
innocent: Si quis innotiex vetit unam dextrum in videa
panis. Leges Ethelredi, cap. 10. apud Brompton.

Inns and innkeepers. Common inn are instituted
for passagers; for the proper Latin word is dircensum,

but that lodgeth there is qviet desertis if a wai
and therefore if a neighbour who is not a traveller, as
a friend at the request of the inn-keeper lodge there, and
his goods are stolen, he shall not have an action, for the
words of the writ are, Hospitandi homines per partes, ubi
hospitandi hospitia existant transactis et in ejusdem
hospitii, Co. 8 Rep. Coke's case. Neither shall the inn
keeper answer for any thing that is out of his inn, but
only for such things as are infra hospitium; the words are
Beram buna & catalla visra hospitia illa existentia. Cottlei,
ed. 1727.

1. Who may set up an inn; who deemed a common inn
keeper, and the privileges allowed him by law.

2. Of the duties enjoined innkeepers; and of offences com
mitted by them in filling corrupt commodities, or at exorbitant
prices, and in refusing to harbour or entertain guests.

3. In what cases an innkeeper is chargeable for things
plained or lost, who is such a guest as may charge an innkeeper
and to what manner he is to be charged.

4. Of the innkeeper's remedies against his guests.

Innkeeper. The manner in which an innkeeper
may set up an 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-governed inns; for the keeping of an inn is so
franchise, but a lawful trade, open to every subject, and
therefore there is no need of any licence from the King
for that purpose. 2 Roll. Abr. 84. Palm, 367, 1 Balf.

But as inns from their number and situation may be
more numerous, they may be suppressed, and the keeping
them may at Common law be indicted and fined,
being as guilty of a public nuisance; and in like manner
may they be dealt with, if they usuallu harbour thieves,
or persons of scandalous reputation, or suffer frequent dis

He who has an inn by pretension may lawfully en
large it upon the same land which has been used with it,
either by erasing new buildings thereon, or turning rables
into houses of entertainment; and he shall have the
same privilege in such new part, as in any other part of
his house. 2 Roll. Abr. 84.

Also it is agreed, that the statute 5 u 6 Ed. 6, cap.
25. and other statutes concerning the licensing of ale
houses, &c. do not extend to inns, unless an inn degr
erate into an alehouse by suffering disorderly tilling, &c.
in which case it shall be deemed as such. Hutton 99.
1 Salt. 45.

A person who makes it his busines to entertain tra
vellers and passagers, and provide lodging and necessa
ries for them and their horses and attendants, is a com
mon inn-keeper; and it is not matter what whether he
have any sign before his door, or not. Palm. 374. 2

But though it be the entertaining of passagers 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 bur
then of an inn-keeper; but if after the taking down the
sign he uses to harbour men, it is as much a common
inn as if he had a sign. Palm. 374. God. 346.

It hath been adjudged, that a person living at Epyon,
and lodging strangers for drinking the waters in the fea
son, and fellow with them without beer, and to no other
persons except such lodgers, is not an inn-keeper, as
is 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 Med. 427. S. C.
Parker and Jftler, adjudged.

A person who receives cattle to agil, on an agree
ment 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 pur

An inn-keeper is distingjed from other traders, in
that he cannot be a bankrupt; for though he buys pro
visions to be spent in his house, yet he does not properly
sell them, but utter them at such rates as he thinks rea
sonable, and the attendance of his servants, furniture of
his house, &c. are to be considered; and the statutes of
bankruptcy only mention merchants that use to buy and
sell in grofs, 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 specie, but they are con
tracts for house-room, trouble, attendance and necessar
ies, and therefore cannot come within the dsign of
such words, since there is no trade carried on by buy
ing.
ing and battering commodities. 4 G. Car. 549. 1 I 1

But where an inn-keeper is a chapman also, and buys and sells, he may on that account be a bankrupt, tho' not bound in his accounts, and this has been frequently held. 7 Tit. 45. 77.

For the security and protection of travellers, inns are allowed certain privileges, such as that the horses and goods of a guest cannot be distrained, &c. 3 Dall. 270. Co. Litt. 57. 2 Pern. 129.

Also the law takes care of the reputation of an innkeeper; and therefore where in cafe for words the plaintiff declared, that he was perfidious of certain fables in what he went. "Bell-Savoy Inn," that he had accommodation for travellers, and that he got his living by the exercising of that faculty; that the defendant was perfidious of another inn, and that a perfom not known inquiring for the "Bell-Savoy Inn," (whither he was directed to set up his horse,) he said these words, This is "Bell-Savoy 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 lost his customers; and on Not guilty pleaded, the jury having found for the defendant as to the first words, and as to the law for the plaintiff, 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 inquires for such inn, that he has no horses, those words are actionable; also it was said by Hale to have been adjudged actionable to dissect a horse from going to an inn, by telling him the small box was there. Till. 25 & 26 Car. 2. S. T. & Allin. Raym. 231. S. C.

2. Of the duties enjoined inn-keepers; and of offences 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 same, he is not only liable to render damages for the injury in an action on the cafe, at the suit of the party injured, but also may be indicted and fined at the suit of the King. 9 C. 87. Dyer 158. Br. Allin for Caf. 76, 92.

For he who takes upon himself a publick employment as a host, as far as his employment goes; therefore an innkeeper 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 Salt. 18.

But the duty of an inn-keeper does not extend to the finding of guest with clothes or wearing apparel. 2 Red. Rap. 79.

Also if the guest be assaulted and beat within the inn, he shall have no action against his host; for the charge of the host extends to the moveables only, and not the person of the guest. 8 Co. 32. in Cafie'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 tie horse be stolen, 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. b. 2 Brownl. 255. & 4 Kent. ch. 6. S. P. adjudged. 2 Brownl. 255. S. P. per ear.

But if the host does not require the horse to put his horse to graze, but the horse does it of his own head, if the horse be stolen, he shall answer for it. 8 Co. 32. b. 2 Red. Rap. 79. 2 Bosc. 257. 15 S. P. per ear.

Also if the horse upon the common right of the host puts the horse to graze, and by the voluntary and wilful negligence of the host the horse is slain, as if the host voluntarily leaves upon the gates of the close, by which means the horse stays out, and so it stoles or loss; an action on the cafe lies against the host. 1 Red. Atw. 4. Mylbo & Esq.

Inns are also restrained from selling at exorbitant prices, and may be indicted if they extort any greater or larger sums than those rates and prices that are imposed on their commodities. Carth. 150. Slin. 291.

And to this purpose it is enacted by 21 Jac. 1. cap. 2. That all hostlers or innholders shall sell their horse-bread and their hay, oats, beans, pease, and hay, 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 innkeeper dwelling in any town or village, being a thoroughly fair, and may be a town corporate or market town, wherein any certain baker, having been an apprentice to the trade for seven years, it 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 innholders 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 affile, justices of oyer and terminer, justices of peace in every liberty, or borough or chartel within this realm, freely in their turns, and for the same, and their leet may inquire, hear and determine the said offences of the said hostlers and innholders, who shall be fined for the first offence, according to the quantity of the offence: And for the second offence shall be imprisoned for one month, and for the third offence shall stand upon the pillory. 21 Jac. 1. cap. 2.

If an innkeeper sells corrupt wine or victuals, an action lies against him, also if his servant fell such corrupt wine or victual, an action on the cafe lies against the master, though he did not order the servante to sell it to any particular person. 9 Hen. 3. 1 Rol. Adw. 248.

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 same, he is not only liable to render damages for the injury in an action on the cafe, at the suit of the party injured, but also may be indicted and fined at the suit of the King. Dyer 158. pl. 33. 2 Brownl. 254. 2 Roll. Rep. 345. Kent. 50. Palm. 367. Godb. 346. 1 Salt. 388. Carth. 150. S. P. admitted.

Also it is said, if an innkeeper may be compelled by the parties to the suit to receive and entertain a passenger as his guest. 5 Ed. 4. 2. Dall. cap. 7, 1 Show. 268.

Also an innkeeper, or a person keeping a lively-stable, is obliged to receive a horse, tho' the owner does not lodge in his house; for by taking upon him a publick employment, he is obliged to serve the publick as far as his employment extends. After 867. pl. 1299.

3. In what cafe an innkeeper is chargeable for things stolen or left, who is such a guest as may charge an innkeeper, and in what manner he is to be charged.

Innkeepers are clearly chargeable for the goods of guests stolen or left out of their inns, and this is without any contract or agreement for that purpose; for the law makes them liable in replevin of the reward, as also in replevin of their being places appointed and allowed of by law, for the benefit and security of travellers and travellers. Dyer 262. pl. 32. & 32. Co. 2 Pard. 178. Ns. Ns. 750. Lawr. 17.

And this duty and burthen, enjoined innkeepers by law, they cannot discharge themselves of, under pretence of sickness, want of understanding, absence from their houses, &c. Fis. Hylst. 5. Br. Allin on the carp. 43. Salt. 900. 2 Rol. 248. In all cases committed to an innkeeper, no goods must be entertained by him, which the innkeeper refeues, because his house is already full; whereupon the party sues, he will find amongst 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 recital of the writ is, 

**Innkeepers who keep common inn, &c.** and the latter words depend upon the former; but the plaintiff ought to count that he kept a common inn. 

2 Co. 32. a. 

If in such an action brought by the master for good flue from his horse, the plaintiff lays the defendant the innkeepers ought falsely to keep the goods of their guests, and all other goods into their inns brought; the custum is sufficiently allowed to maintain the action, notwithstanding it was objected, there was no such custum to keep the goods of others falsely. 


If in his declaration the plaintiff lays the custum for common inns, and then lays that he was basisitus in hoftitis, &c. this is well enough; for it must be intended that it was common, else it is damnus & non basisitum. 

Rib. 245. and see Rot. Ent. 457. Rib. Ent. 22. 

The declaration against an innkeeper was that: Præd. D. com'x hoftis actu et ibidem existit in stabulum deliverit a certain gelding, to be by him safely kept, at a reasonable rate, and to be be him safely delivered to the plaintiff; and after verdict for the plaintiff, it was objected, that for ought appears the horse was put into the defendant's stable the innkeeper does the deponent which case he is not bound to take any care of it; for the words being Præd. D. com'x hoftis existit may as well be taken in an ablative as dative cafe: 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 indifferent, and therefore gave judgment for the plaintiff. 

6 Mod. 223. Stones and Davitt. 1 Sleve. 474. 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 paymet, and this he may do without any agreement for that purpose, for men, that get their livelihood by entertainment of others, cannot annex such disabling conditions that they shall retain the party's property in cafe of non-payment, nor make such disadvantages and impudent a bussion, 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 Rot. Air. 85. 

Cros. Cor. 271. Carth. 150. 1 Sleve. 388. May detain the person of his guest. 

1 Sleve. 260. 

If a man carries away the horse of B. and put him into an inn to be kept, and B. comes and demands him, he shall not have him until he be satisfied for his meat: for when an innkeeper takes a horse into his keeping he is not bound to inquire who is the owner of the horse, which he is obliged to keep, let him belong to whom he will, and therefore no reason that the innkeeper should be obliged to deliver him till he is satisfied. 

1 Sleve. 373. 3 Boll. 269. 270. 2 Rot. Air. 85. 

Pep. 118. 179. 

If A. deliver a horse to an innkeeper, and B. promises that in consideration that the innkeeper will deliver over the horse to A. that he, viz. B. will satisfy him for his meat, this is a good promise; for here is a good consideration, namely, if B. satisfy the horse of the innkeeper that A. has a damage, and A. regains his horse, that is to his advantage. 

Hutton 101. 

An innkeeper that detains a horse for his meat cannot use him, because he detains him as in the custody of the law, and by consequence the demolition must be in the nature of a distress, which cannot be used by the dilator. 

Mor 577. 2 Rot. Rep. 438. 

By the custom of London and Exeter, if a man commit an horse to an hofteller, and he eat out the price of his head, the hofteller may take him as his own, upon the reason of the appellation of four of his neighbours; which was, it feems, a foible, and, without the approbation of the traffick with strangers, that could not be known, to charge them with the action; but the innkeeper hath no power to sell the horse, by the general custum of the 

4 C
while kingdom. 

when the kingdom. 

with other. 

with others. 

as such. 

as such. 

as such. 

as such. 

as such. 

as such. 

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Inquisition.

Inquisition, Is a manner of proceeding by way of arch or examination, and used in the King's behalf in
moral causes and processes; in which sense it is con-
uned with office. Stawoff, Prerog. 51. This in-
quisition is upon an outlawry found, in case of treason
or felony committed; upon a felo de fez, &c. to intile
the King to a forfeiture of lands and goods: And there is
in such cases, an inquisition only is to inform the court how
process shall be due for the King, whose title accrues by
the attainer, and not by the inquisition; and yet in
the cases of the King and a common peril, inquisitions have
been held void for uncertainty. Lane 39.

In fact there are two forms of inquisitions, one to in-
form the King, the other to vell an interest in him; the
one need be not certain, but the other must; and where
an inquisition finds some parts well, and nothing as to
theras, it may be helped by melius inquirendum. 2 Salk.

Inquisition de vido 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. Mar. Leb.
9 H. 3. c. 24.

Shall be of sufficient men, &c. St. W. jfin. 1. 3 Ed.

Articles to be inquired of concerning the King's lands,
tenta maruis, 4 Ed. 1. b. 1. Inquisitions and indentures shall be taken by twelve
men who shall put their seals to them, St. W. jfin. 2.
3 Ed. 1. c. 13.

A man may be sworn in inquests for want of free-
enmen, St. E.xn. 14 Ed. 1.

Inquisitions to be taken before the granting liberties,
1 de Libert. Petigur. 27 Ed. 1. b. 2.

Commissions of common inquiry shall not be granted,
4 Ed. 3. c. 1.

Traverse of offices found before echeters to be tried
the King's Bench, 34 Ed. 2. c. 14.

Commissions to inquire of certain articles shall be gran-
ded to the judges, &c. 42 Ed. 3. c. 4.

Commissions shall take inquest by men impanelled
by the sheriff, 8 H. 6. c. 16.

Lands feited into the King's hands upon office found,
shall be let to farm to him that tenders a traverse, 8 H.
16. 1 H. 8. c. 10.

Offices found before echeters 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. Are forfeits, coroners, fer-
per vatum corporis, or the like, who have power to in-
quire into certain cafes. Statute of Marlbridge, cap.
18. Britton, fol. 4. and W. jfin. 1. Enquirers or inquisi-
tors are included under the name of ministri. 2 part.
Inf. Sul. 211.

Entrollment (Irresistitio) Is the regissing, record-
ing or entring of any lawful act in the rolls of the
Chancery, as a recognizance acknowledged, or a fiature,
or a fine levied, or in the rolls of the Exchequer,
King's Bench, or Common Pleas, or in the bynings
of London, or by the clerk of the peace in any county,
as the rolls of the Exchequer, any inquisitions inquired, or a deed of
purchase enrolled. See W. jfin. Synod, part. 2. tit. Fees,
Jesl. 133. and 27 H. 8. c. 16.

By stat. 27 H. 8. cap. 16. fett. 1. No lands or
indentures shall pass whereby any file of inheritance
or feethold shall be made, or any use thereof, by ren-
don only of any bargain and sale, except those bargain
and sale be made by writing indented and enrolled in one
of the King's courts of record at Wj'mjnniter, or within
the county where the lands lie, or before the egys ro-
sulatorum and two justices of peace, and the clerk of
the peace of the county, or two of them, whereof the
clerk of the peace is in an inquisition: And such
acts to be made within six months after the date of the
writings; the egys rotsulatorum, or justice of peace and
clerk, taking for the inrolment, where the land exceeds
not the yearly value of 40 l. 21. viz. 12 d. to the jut-
jices, and 1 d. to the clerk; and for the inrolment of
such writings wherein the land comprised exceeds 40 l.
in the yearly value, 5 l. and the clerk of the peace shall
inrol the deeds, and the rolls thereof at the end of every
year shall deliver unto the egys rotsulatorum, to remain in
his custody among other records of the counties.

Sect. 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 inrol deeds.

Stat. 34 & 35 H. 8. cap. 22. All recoveries, deeds
inrolled, and releases to be taken and acknowledged be-
fore 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-
ording to the customs of the said cities, &c. shall be of
like force as they were before the making of the act 32
H. 8. cap. 28. which fee in Leftfes.

Stat. 5 Eliz. cap. 26. fett. 1. All indentures of wri-
tings indented, mentioned in 27 H. 8. cap. 16, of any
bargain and sale of lands or hereditaments in the coun-
ty's of Lancaster and Durham, being made and inrolled
within six months after the date in the Queen's court of
Chancery at Lancaster, or before the Queen's justice of
alife at Lancaster, concerning lands within the county
of Lancaster, or before the Queen's justice of alife at
Chefler, or before the Queen's justice of alife at Chefler,
concerning lands within the county of Chefler, or in
the court of Chancery at Davfines, or before the justice of
alife at Davfines, concerning lands within the county of
the bishoprick of Davfines, shall be as good in law as if
the name had been inrolled in any of the Queen's Courts
at Wj'mjnniter.

Sect. 2. This act shall not extend to lands within any
city or town corporate wherein the mayors or other
officers have authority to inrol deeds.

Stat. 10 Ann. cap. 18. fett. 3. Where in any decla-
rations, avowals or other pleadings in the inrolment of
bargain and sale inrolled shall be pleaded with a prefert
in curia, the person so pleading may produce, to anwser such
prefert, as well against her Majesty as against any other
person, 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 indentures 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 lozes it, he shall not plead the
deed, for in the Queen's court of Exchequer at
Chefler, or before the Queen's justice of alife at Chefler,
concerning lands within the county of Chefler, or in
the court of Chancery at Davfines, or before the justice of
alife at Davfines, concerning lands within the county of
the bishoprick of Davfines, shall be as good in law as if
the name had been inrolled in any of the Queen's Courts
at Wj'mjnniter.

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, if it can be otherwise proved.
2 Eli. P. R. 68.

If a deed be enrolled according to the statute 2H. 8.
cap. 10. it must be in parchmont for the strength and
continuance thereof, and not in paper; and fo it was re-
ferred in parliament by the judges, in anns 23 Eliz. Co.
Lit. 35. & 36. 6. 2 Inf. 673. pays, that fo much is im-
plicit when the inrolment is in any of the King's a
courts of record at Wj'mjnniter, see, that the inrolment
shall be in parchment, and that fo it was adjudged, as
Mr. Pteledon cited it, before the lords in parliament,
anns 23 Eliz. in the great cafe between Robert and Ver-
non, which Lord Coke says he heard and obseved.

An
An inquest of bargain and sale was inrolled in Chine-
rray, exemplified under seal, and at the end was a me-
memorandum, viz. that the plea was inrolled, but no time
mention'd when the same was done, but plaintiff offered
to prove by circumstances, that it was inrolled within the
six months upon which great debts were; but a clerk
brought an order of the court of B. R. to the inroll-office
to know their usage and cutoff, as to the inrolling the
time of the inrolment, he certified the court upon his oath,
that they inrolled it, that before the 16 Eliz. at which
time the inroll-office was erected, they did not use to
inroll the time, but they use to do otherwise now.
Fiflight.
In 2 Lit. P. R. Inrollment 68. it is said, that, before
the 20th year of Queen Elizabeth it was not used to
inroll the inrollots of deeds upon the back of them,
as it is now used to be done. Cites Micb. 23 of Car. 1.
B. R. by sale, that now it is conflagrantly used, and to
good purpose, in respect of the more easy and reader
proof of the inrolloment upon any occasion; for credit
is given to that inrollment without any farther proof, as
being made by a known officer, and intruded for that
purpose.
If land be inrolled for sale only, the deed may
be said to be recorded; but where a bargain and sale is
inrolled pursuant to the statute, the inrollment is a record,
so that the copy of it may be read in evidence; for
Master of the Rolls. Note; Afterwards upon a re-
hearing, an infolio upon a deed was directed whether such
deed of ufe was executed, and upon the trial, the copy of
the deed was allowed to be read as evidence on the trial.
Combs v. Dovell, S. C.
A. in consideration of blood, covenants to lant feided
unto the use of B. his fon, and the heirs of his body, and
in default of such issue, then to the use of J. S. in
inrollment of poet, B. died without issue. The deed was
not inrolled; because as the ufe is partly by covenant
to land seided, and partly by bargain and sale, or
whether it must arise wholly one way, or wholly the other,
and not by fractions? Bringman Ch. J. said, in this case,
that there was a mixt inrollment, and there needed no
Garths v. Hantschw.
If land be conveyed in a deed for money only, then
the deed must be inrolled, else, the land will not pass by
the deed. But if land be conveyed in inrollment of money
paid, and also in consideration of natural love and
friendship, birth, child, or relation, there it is not ne-
necessary to inroll the deed, but the lands will pass, tho' the
deed be not inrolled; for in the former case it is a
mere deed of bargain and sale, which passeth without inrollment;
but in the latter case, the land will pass by way of ufe. 2 L. P. R. 69.
See 14 Black, tit. Inrollment.
Inscriptions. Were those written instruments of
charts by which any thing was granted. In Conc.
Christie anno 800. H dicti praelatus item inscriptiones
manuscripta, &e. terrarumque fini adscriptionem.
Inlatae, A proctor or adversary at law. —
Quod eiium ejus informentes para parum tempo ducaruntur,
Inquest; To reduce to fervitude. Si veniam av-
cilium uxoruni, et fide pietat furturi inferius. Du Cange.
So infervice tenementa is to subject them to services.
Bradim. cap. 54.
Inuenta, (Lit.) An indict. Item ordinamentum quod
quandam aera praecipit, injustus & vagansgebens encomiatus
Inlatae, The same with Figuris or Exonias. Plata,
terum forent, sed fortunati edulis in cernendis infulis offertis,
&c.
Inlatae Veterum. Way-livers, or such as lie in
wart, are words by which the 4 Hen. 4. cap. 2, are not to be put in inrollments, arrangements, &c.

Insufficient, Il advice, or pernicious counsell. —
Ri Duarum Scionis for infulum, in cogant & temtation
Naturalium comiti. — Civitim Omnium infulum, fo-
datur, &c. malage Rigi infulus et feriis dolueri, dopem.
Sm. Donell. fab anno 1809, whereina infulation, an evil
tele, is mentioned, and raedus infulation best suum for
inflation into inflation, in a hor. in 1808, is of a.
Insufficient, &c. at Regn a roreg repitire compliment.
Wig. Flor. (ab anno 845.
Insufficient compted. Is a writ or oction of
account which lies not for no thing certain, but only for
the goods and chattels.
In. Art. 9. The common declaration
upon an infulent, and upon an inflent, is that the plain-
tiff and defendant such a day, year, and place, account
brought together between of themselves of and concerning divers
sums of money, &c.
Insufficient recounts. It is one species of the writ called a
formuidous, for
Inflation, (Figuratio.) Is a covert, and cunning
creep ting into a man's favour; mentioned in dit. 21 Hen.
8. e. 5. Inflation of a will, is among the Civitium,
the full production of it, or the leaving it prorogativa,-
rium, with the regler, in order to its probability. Couen.
cid. 1777.
Insufficient. Till of late the Chancery would not put out
an insufficient trustee; for that he was intrusted by the
donor; see Eyre J. Comb. 185. Micb. 4 H. &
An insufficient perdon male executor cannot be put
out by the ordinary; for he is intrusted by the testator,
and the court of Chancery will compel him to give security
before he files his account upon the truax.
Carth. 455. Micb. 10 H. 3. B. R.
Insufficient debtors, relieved, 1 Ann. 5. t. c. 25. 2
& 3 Ann. t. c. 16. 1 Geo. 1. t. c. 22. 1 Geo. 1. t. c.
2 Geo. 2. t. c. 25. 22. 24 Geo. 2. t. c. 31. 28 Geo. 2.
c. 13. 29 Geo. 2. c. 18. 3 Geo. 17. 5 Geo. 1.
Inc. 3. 41.
Inspection. See Tranquility and age, Etat.
Insipidus, Letters patent to called, and is the same
with explication, which begins thus, Rex enunclat, &c.
Insipidus inquisitionem quondam, literarum potent, &c.
It is called Insipidus, because it begins after the King's
title, and where the king truax is the terminus a quo, the
second leaf, he surrenders his former term; and for the same
in
plant of taking the second leaf, the former is expired.
And in the case between Peti and Hales, he who kills
himself commits not felony till he be dead, and when
deaf he is not in being, so as to be termed a felon; but
as is lodged in law as infipidus, at the very instax of
the fact done, and there are many other causes in law
where the instant time, that is not devidable in nature,
in the congregation of the mind is divided. Couen.
An infant is not to be considered in law as in
lagn as a point of time, and no parcel of time; but in
our law things which are to be done in an infant,
are to be done in the law a priority of time in them;
as lefle for life makes a leafe for years, they both
surrender to him in reverson, though 'tis made in an
infant, yet it shall be understood to have degree, fillet.
the
the surrender of the lease for years to tenant for life, and then the surrender of the lease for life, &c. Arg. Micb. 32 Ed. 2. 8. 57. 2. Leit. 238, 40. 8. 33. For wherein this device by one joint tenant of his part; for no device can take effect but by the death of the devisee, and by his death all the land comes immediately to his companion; and there takes notice, that Littlecane by the words *puf mortem & pro mortem* L. 228. 3. 7. though they jump at first sight, yet alloweth priority of time in the intestate, which he distinguishes by *per* & *puf mortem*, and fays, 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 intestate, as *per mortem & puf mortem*. Sedgwick, in his sale of The King v. Dr. Birch and the Bishop of London.

So, devisee of a term to his son, and that his wife shall have it during the minority of his son; this shall be continued a devise a devise to the wife, and after to the son when he comes of age. Fin. Law 18 5.

So where a man grants his devise 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.

In the text, *In Roman* is used for deeds for a flock of cattle. Item manumitterit nullum undam bates pratum. Mon. Angl. 97. 1. 11. Sedgwick. In the text, *in Roman* is used for deeds for land in intestate. Idem, infermam, properly young beafls, fleece or breed—Et de inutilitatis terna jumenta, i.e. three fleee cattle. Parch. Antip. p. 288. In Roman was commonly used for the whole flock upon a farm, Cattle, waggons, ploughs and all other implements of husbandry. *In Roman* signifies a deed of infrusion, in quod mino situ. Fleta, ib. 2. c. 72. 7. So instores, inutilitatis is used for the books, place, sventiments and all other utensils belonging to a church, by the synod of Exeter, A.D. 1287. can. 12. 44. 5. So terra inutilitatis was land ready fenced or fenced with all things necessary to carry out its use or occupation of a farm. As in the Magna Charta of King John, A.D. 1215. Et reddat benevole, cum ad placitum atatem, terrenam iouae, inutilitatis de causis & omnibus aliis rebus, inutilitatis in our hiftorians and MIS is taken in the same sense as *In Roman*.

In the text, *It is, when the bishop fays to a clerk who is preferred to a benefice, Infruptus est totius eft a species of *general externum* & turribulit inutility. Brempon. pag. 935.

Instituto, is, when the bishop fays to a clerk who is preferred to a benefice, Infrum est totius eft a species of *general externum* & turribulit inutility. Brempon. pag. 935. See Henttler.

Infruptus, is a word used by Auditors in their accounts in the Exchequer, when they fay for much remains injurer to such an account, that is, for much remains due upon such an account. Stat. 24 Jac. cap. 2.

Infruption or Infruption, signifies a security given, in consideration of a sum of money paid in hand of so much per cent. to an affurer or insurer, to indemnify the insured from such losses as shall be specified in the policy or instrument of assurance, furnished by the former to the latter. An assurance that is of a spirituality and temporal ity. As to the spirituality, viz. Corporation, he is a complete parson by infüerljion. But as to the temporalities, as glebe-land, &c. he has no frank-tentemn within till infüerljion. Coa. 2 Rep. Dibby's cafe. The first beginning of infüerljions to benefices was in a national synod held at Welfinfler by John de Crema, the pope's legate, A.D. 1124. which see in Selden's Hiftory of Tithes, pag. 375. See Henttler.

Insurer, is a word used by Auditors in their accounts in the Exchequer, when they say for much remains injurer to such an account, that is, for much remains due upon such an account. Stat. 24 Jac. cap. 2.

Insure or Insurer, signifies a security given, in consideration of a sum of money paid in hand of so much per cent. to an assurer or insurer, to indemnify the insured from such losses as shall be specified in the policy or instrument of assurance, furnished by the former to the latter. An assurance that is of a spirituality and temporal ity. As to the spirituality, viz. Corporation, he is a complete parson by infüerljion. But as to the temporalities, as glebe-land, &c. he has no frank-tentemn within till infüerljion. Coa. 2 Rep. Dibby's cafe. The first beginning of insuyions to benefices was in a national synod held at Welfinfler by John de Crema, the pope's legate, A.D. 1124. which see in Selden's History of Tithes, pag. 375. See Henttler.

Insurer, is a word used by Auditors in their accounts in the Exchequer, when they say for much remains injurer to such an account, that is, for much remains due upon such an account. Stat. 24 Jac. cap. 2.

Jews in the year 1182. but whoever was the first con-
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Section 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 losses, and shall satisfy all such demands; and in case of refusal or neglect, the parties affraid may bring action of debt, &c. General Courts of record at Westminster, in which the plaintiff may declare that the same corporation is indebted to them in the monies demanded, and have not paid the same according to this act.

Section 6. The corporation in general courts may raise such capital stocks, either by taking subscriptions of particular persons, the full of monies from their members, or by such other ways, as to such general courts shall seem expedient; and all subscribers shall have a share in the capital stock, and shall be admitted members; but no person shall be intituled to any greater share in the stock than the money which they shall have paid.

Section 7. The corporations shall have power in their general courts to call in from their members any further 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 flipp the dividend upon such member, but also the transfer of the shares of such defaulter, and charge him with interest at 3 per cent. per annum; and if the principal and interest shall be unpaid three months, the corporation, or their courts of directors, may authorize partners to sell so much of the stock of such defaulter as will satisfy the same; and the money so called in shall be deemed capital stock. Nevertheless the corporation in general courts, may cause any sums called in to be divided amongst the then members, and the shares in the capital stock shall be proportionably abated.

Section 8. For enabling the corporations to lend money on parliamentary security, 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, fo as the principal shall not exceed the principal monies then owing to them on such parliamentary security; and such bonds shall not be chargeable with stamp duties.

The shares in the capital stock shall be transferable and devisable; and their bonds shall be assignable and receivable 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 legatees of the testator.

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, or 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 customs of Lendey or elsewhere.

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 bostommy, as to him shall seem meet.

All other corporations, and all partnerships for affuring ships or merchandizes at sea, or for lending money upon bostommy, shall be restrained from underwriting 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 bostommy. And if any corporation, or partnerships acting in that capacity, or any one of the two corporations to be established 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 by all of them acting in that capacity, to the person who shall sue for the fame in any court of record at Westminster; and if any corporation, or partnerships acting in such partnership, agree to lend money by way of bostommy contrary to this act, the security shall be void, and such agreement shall be adjudged an usurious contract: Nevertheless any particular perfon shall be at liberty to underwrite policies, or may lend money by way of bostommy, so as the fame be not on the account or title of a corporation, or of persons acting in partnership.

Section 13. If any perfon shall for aye the common fee of either of the corporations, or counterfeit or alter any policy or obligation under the common seal, or shall offer to dispose of or pay away any such counterfeited 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, or with intent to defraud any of either of the said corporations, or any other perfon; such officer being convicted shall be guilty of felony without benefit of clergy.

Section 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 month of the time of his Majesty, the other to the prosecutor, to be recovered as before mentioned.

Section 15. Upon three years notice to be printed in the Gazette, and asfanned 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 30,000l. which the corporations were to pay to his Majesty without interell, 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 asfanned on the Royal Exchange, shall be deemed sufficient notice.

Section 16. If after the expiration of 31 years, his Majesty shall judge the farther continuance of the said corporations to be hurtful to the publique, 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, false faits, &c.

Section 17. In case the corporation shall be redeemed within 31 years, or be revoked by letters patent after 31 years, the fame corporations, or any corporation with like powers, &c. shall not be grantable again.

Section 18. It shall be lawful for any joint stock company, and the Exchange company, to have their feet on the bottom of any flipp, and on the goods on board any 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 bostommy, this act notwithstanding.

Section 19. If any governor or member of either of the corporations shall, in account of the said corporations, lend to his Majesty money by way of loan or expectation, 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 treble the value of the sums for his Majesty; one fith part to be paid and the residue to be recovered in any court of record at Westminster by action of debt, &c. and the refuse to be disposed of to publique use, as shall be directed by parliament.

Section 20. The corporation called the London assurance having paid into the Exchequer the sums of 38,550l. for the purpose of paying 38,750l. further part thereof in three months; and the corporation called The Royal Exchange assurance of houses and goods from fire, having done the like, the refuse of the said sums amounting together to 300,000l. shall be released.

Section 21. Where the Royal Exchange assurance, and the London assurance, are subject to pay double damages besides costs, the plaintiffs shall recover against them only single damages and costs.

Stat.
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 merchandise at sea, or going to sea, it shall be

lawful for the said corporations to plead generally, that

they have not broke the covenant in such policy con-

trated; and if thereupon either be joined, it shall be lawful

for the jury to give such part only of the sum demanded,

if it be an action of debt, or so much in damage, if it be

an action of covenant, as it shall appear upon the evi-
dence that the plaintiff ought in justice to have

recovered.

 Sect. 2. Affurance on private ships of war, fitted out by

his Majesty's subjects solely to cruise against his enemies,

may be made by or for the owners, interreat or no interreet,

and without average, and without benefit of salvage to the

assure.

 Sect. 3. Any merchandizes or effects from any ports in

Europe or America, in the possession of the Crowns of

Spain or Portugal, may be assured in such manner as if

this act had not been made.

 Sect. 4. It shall not be lawful to make re-assurances,

unless the assuree be involvent, become bankrupt, or die;

in either of which cases such assuree, his executors, ad-

ministrators or assignes, may make re-assurance, to the

amount of the sum before by him assured; provided it be

expressed in the policy to be a re-assurance.

 Sect. 5. In all actions brought by the assuree 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

had assured in the whole, and what sums he hath bor-

rowed, for the voyage or any part of the voyage in

which the said ship or merchandise was.

 Sect. 7. It shall be lawful for any person or body cor-

porate, sued on any policy of assurance, to bring into court

any sum of money; and if any such plaintiff refuse to ac-

cept such sum with costs to be taxed in discharge of such

action, and afterwards proceed to trial, and the jury

thereon find nothing to the plaintiff and in all actions of

such plaintiff shall pay to such defendant costs to be taxed.

 Sect. 2. What shall be deemed baratry and deprivation; and of charging and discharging the injuring therewith.

Baratry is when the master of a ship, or the mariners cheat the owners or infringers, whether by running away with the

ship, finding her, defecting her, or immeaging the cargo.

Dist. 3. and 214.

Baratry of the mariners is a devise to epidemic on

shippers that it is very great for a master, but his industry

never too great, to prevent it; a span of villainy on

shipboard soon fpreads out to a cloud, for no other caufe but

that of the circular encouragement that one knavish ma-

riner gives another. However the law does in such cases

impute offences and faults committed by them to the

negligence of the master; and if the master or other wise, the

merchant would be in a very dangerous condition. The

reason why he ought to be responsible are, that the

mariners are of his own choosing, and under his corre-

cction and government, and know no other sife for en

shipboard but himself; and if they are fully, he may
correct and punish them, and justify the same by law.

Like wise, if the fact is apparently proved against them, it

may be inferred from the badness of their characters, that the

master by his negligence or acquiescence has made him liable, and that as well by the Common law as the law


And therefore, in all cases whereof the merchant

loads abroad any goods or merchandise, if they be lost,

impaired, or in any other way dammified, he must be

responsible for them; for the very nature of the assurance

makes him liable, and that as well by the Common law

as the law mariners. Malloy, b. 1. t. 3. sect. 15.

Where a ship was insur'd against the baratry of the

master, &c. in an action brought thereupon, the jury

found that the ship was lost by the fraud and negligence of

the master. The court held, the ship would not be in

war with the ship, or immeage the goods, the merchant

may have an action against him; for it is reasonable that

merchants who hazard their fleeks in foreign traffic,

should secure themselves in what manner they think pro-

per, against baratry of the master and all other frauds;

and this may extend to fraud in the master; not a

bare neglect: and they all agreed that fraud is baratry,

who not named in the covenant; but negligence might

not. 1 Med. c. 230, 231.

Cambridge brought a writ of error upon a judgment

given against him in the Common Pleas, in an action brought

by the defendant against a policy of insurance of the

ship Riga Merchant, at and from Port Mahon to London.

And forseent Bractenwite for the plaintiff in error in-

flicted, that the judgment was erroneous, because the

breach was ill aligned; because the policy was, that the

defendant Co. must either infurd the said ship, among

other things, against the baratry of the master, and all

other dangers, damages and misfortunes, which should

happen to the prejudice and damage of the said ship; and

the breach alledged was, that the ship, in the said voyage,

for fraudes & negligences magni novi prindelum deprectis

perfraciturque; & of fpace & &c. &c. &c.

It is, that infider in the meaning of the word baratry; but the breach should have been express, that the ship was lost by the baratry of the

master. Besides, the owner of the goods has a re-

medy against the owners of the ship, for any prejudice he

receives by the fraud or neglect of the master; and, there-

fore, there is the left reason the insurer should be

liable. Besides, if the word baratry should import fraud,

yet it does not import neglect; and the fact here al-

ledged is, that the ship was lost by the fraud and neglect of

the master. But the court was unanimously of opinion,

that there was no occasion to aver the fraud in the very

words of the policy; but if the fact alleged came within

the meaning of the words in the policy, it is sufficient.

Now baratry imports fraud, (Du Frf. Glf. verbo

Barataria, fraus, abtr.) and he that commits a fraud

may properly be said to be guilty of a neglect, &c.

And baratry of a master is not to be confined to that which is not, because it imports any fraud. And the judgment was affirmed, April 27, 1724.

Cambridge. Str. 581. S. C.

The ship the Gothic Lyne being advertised to go to

Marfellis, goods were ship on board her on behalf of

the plaintiff, and a bill of lading signed by the master,

whereby he undertakes to go a dinte route a Marfellis, and

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, on advertisement, gave orders for goods to Groens, Loghans 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 his ship by Marfelles, if he were not found on the coast of Naples. The ship however did put to sea 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 alleged of a life by the baratry of the defendant. And the plaintiff maintained, that any fraud or malversation of the master was within the meaning of the word baratry. 

*Du Frie* terms it dols qu's fit in contradistinctions; and do all the dictionariums, as Florio's Italian Dictionary verbo Baratry, Minifie, Portiere, &c. And that in the cases of Knight and Cambridge (the preceding cafe) and Knight and Dodd, where the left was 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 inferred, this was no more than a deviation, in which case the insurer was discharged, and the plaintiff's remedy was against the master or master. This, the defendant alledged a breach in 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- tor; and compared it to the cafe 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 laid some time, and, upon their return, asked the Chief Justice, whether if the master was to have no benefit to himself by pulling by Marfelles, and went only for the purpose of the ship, that would not be a baratry. And the Chief Justice answeing, no, they found for the defendant. And now a new trial being moved for, the cafe was argued; and all the court was of opinion that the verdict was right. For the master had acted confidient with his duty to his owners, and the plaintiff's agent knew that he had amended alteration of the goods which put on board, and might have refused to ship them, or have altered the insurance. To make it bar- atry, there must be something of a criminal nature, as well as a breach of contract; and that there the breach being alleged only on the baratry, was not supported by the evidence. So the defendant had judgment. 

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*V. Col. to Gen. 2 Staunno v. Brown.*

The insurance was from Carolina to Iffon, and at and from thence to Brifid: It appeared the captain had taken in cattle, which he was to deliver at Falmouth before he went to Brifid; but the ship was taken in the direct road to both, and when he came to the point where he was to turn 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 confinament to Amsterdam; a loss happened before the came to the dividing point between the two voyages, which the insurers was held to pay for. 

*Str. 1249. 19 Ge. 2. Pyler v. Wilmor.*

The ship Mediterranean went out in the merchants service with a letter of marque, and being bound from Brifid to Neufland was infected by the defendant. In this case there was no prize, and the defendant 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 tend her to Brifid; 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 order to some of the crew to carry the

**Title:**

*INS* and *INS*.
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appointed for that trade at Spithead, and the ship Ranger having for convoy in the Downs, proceeded for Spithead, and was taken in her way thither. The instant this being the time of a French war, the ship should not have ventured through the channel, but have waited in the Downs for an occasional convoy. And many merchants and shipping people were examined to that purpose. But the Chief Justice held that the ship was to be considered as under the protection of the seas, pirates, etc., from London to Folly, 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 fet away and taken, but if there is no default, the matter having done all that could be done, and the ship is taken, they are liable: So if the ship be lost by feats of weather; for they are liable against thefts by their own agreement. 2 Salk. 443. Hill. 2 W. & M. & R. Ieffins v. Legrand, S. C. 3 Lorc. 320. 4 Mid. 51. 1 Deon. 216. Hill, G.

Action on a policy of assurance; the defendant pleaded non assumpsit, and the jury found the policy, by which the insurers undertook against the perils of the seas, pirates, etc., from London to Folly, 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 set away and taken, but if there is no default, the matter having done all that could be done, and the ship is taken, they are liable: So if the ship be lost by feats of weather; for they are liable against thefts by their own agreement. 2 Salk. 443. Hill. 2 W. & M. & R. Ieffins v. Legrand, S. C. 3 Lorc. 320. 4 Mid. 51. 1 Deon. 216. Hill, G.

Action on a policy of assurance by the defendant at London, infuring a ship from thence to the East-Indies, warranted to convoy; and shows that the ship went from London to the Downs, and from thence with convoy, and was lost. After a frivolous plea by the insurers against the claim, to which it was objected, that there was a departure without convoy. Et per cur. The clause warranted to depart with convoy, must be considered according to the usage among merchants, i.e. from such place, where convos are to be had, as the Downs, &c. Holv Chief Justice contra. 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. 2 Salk. 443. Mich. 4 W. & M. & R. Infinite's father's cafte.

The words warranted to depart with convoy have been referred to imports, by the usage among merchants, a conveyance with that convoy as long as may be. Lat. Rep. 287.

The plaintiff being fast 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 Matthews, who is the master, and also owner of the ship, had, before the voyage, entered into a bot- tom-bond to the defendant for 200l. and that after, by bill of sale, he aliened over his interest in the ship to the defendant as a security for this 200l. and infilled that Matthews was a demurrer to the bond, over the ship, that in law the ownership and property would be looked upon to be in the defendant, and infilled, 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 not be carried up. The voyage infilled was from London to Marfellis, thence to some port in Holland. The case was, that the master failed with the ship to Marfellis, and then, instead of pursuing the voyage, sailed for the West-Indies, and there fold the ship, and died insolvent. Their matters being confessed by the answier, and an injunction was granted for, and a mortgage was made for, and a mortgage to be considered in equity as owners of the thing mortgaged, and that Matthews, the master, being owner, could not be guilty of baratry. To shew which, a cafe was cited of Hanna and Brown, where it was determined the preceding term in the King's Bench, Lord Hardwicke, that a person going down the coast for goods, and doing so by the matter against the ship and goods; and this being in the case of a ship, the question will be, who is to be considered as the owner? There are several cases that might be put where baratry may be assigned as the breach of an assurance, and baratry or not, is a question that is purely determinate by law, but where the parties are not for the court of law will not consider a mortgagee as having any right or interest in the thing mortgaged; and there are many cases 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, and did in presenting him with goods, or, was not a breach of the contract, as matter of the ship, and for a baratry; and this may be considered likewise in equity. 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 interpreting by injunction upon a plaint at law; and considering the mixed nature of this case, I think an injunction ought to be granted. Ordered accordingly. Dict. Tr. and Cam. 127. 16 Geo. 2. London v. Swaff.

The plaintiffs being merchants residing at Gibraltar, and one of them coming to London to sell goods fit for the place, bought to return the value of 3000l. 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 inferr'd in the folde advertisement, that the ship was to sail with the West convoys; and in consequence thereof he shipped his merchandise and made assurance thereon to the amount of 2850l., and inferr'd 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 1754, on her voyage and arrived at the Barbadoes the 7th, where they continued till the 21st, in company with the Otter Boop of war, some English merchant ships, and three Dutch East-India ships. Captain Taylor, whilst he lay in the Downs, having received intelligence that the convoy at Spithead was ready to sail, went on board the Otter ship, in order to sollicite the commander's taking him under his protection to Spithead; but this the said gentleman informed him, was not in his power to comply with, as he was ordered on a cruise over to the coast of France, whereupon Captain Taylor went on board the Commodore of the Dutch East-India ships, who promis'd to take the Ranger under convoy. On the 12th of May, the Otter ship, the Dutch, and the Otter anchor, as did also some English ships for the benefit of that convoy; and a few hours after they were under sail, the Otter ship parted from them on her cruise, and the Ranger kept company with the three Dutch ships, till between four and five o'clock the next afternoon (being the 13th) when (in her direct course to Spithead) the ship was attacked by a French privateer, called the Ruffine, within three miles of the Dutch East-India men, and eighteen of Spithead, where she was to join the convoy to Gibraltar, and after some resistance the ship was taken and carried into one of the islands of the Madeiras; and there regularly condemned. The plaintiff, being the aforesaid captives, applied to the respective underwriters (and among them to the defendant) requiring satisfaction for his loss; but they absolutely refused paying any thing, inferring that the ship had not failed according to the terms of the policy, viz. at and from London to Gibraltar, warranted to depart with convoy, but as the departed from the convoy (which he had not to do have done) and was taken in consequence thereof, the in- surers are not bound to satisfy a loss, which they were never obliged to be answerable for; and the ship ought to have had till a convoy offered, and not gone to fetch at such a distance, as they evidently exposed her to be taken in getting thither. On this occasion the party held that they had complied with the tenor of the policy, that the defendant misconceived the natural construction of the words.
words warranted to depart with convoy, as they did not imply to have done so with convoy from the port of London, as the rendezvous for ships bound to Gibraltar and the Straights, is generally at Spithead, where they join the convoy; and altho' possibly there may be an infraction of two or a convoy failing from the Nore and the Downs to Gibraltar, yet this is an uncommon and extraordinary thing, and was not to have been expected on this occasion: on the contrary, it was then known, that the convoy for those parts was to be at Spithead, and many ships went there from London to take the benefit of it, so that the warranty could only be understood from Spithead, as it was from the convoy there the Captain was to make 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 Officer's departure, than the 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, Insurance, &c.

1. Intangibles, Were a sort of thieves in Richard's, in the fasthill Northern parts of England, mentioned 9 Hen. 5. cap. 8. and to 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. 

2. Intangibles, See Ezettum.

3. Intangibles (ter sciellata legis,) The understanding, intention, and true meaning of law. 

4. Citizens, Of a sort of laws, says, the judges ought to judge according to the common intention of law.

By intendment of law every patron, or rector of a church, is supposed to be reftient in his benefice, unless the contrary be proved. 

5. Common intention, One part of a manor by common intendment, shall not be of another nature than the rest. 

6. Common intention a will shall not be supposed to be made by collusion. 

7. The law presumes that every one will act for his best advantage, and more credits the party, in whatsoever is to his own profit. 

8. Ufury shall not be intended, unless it be expressely found by the jury. 

9. Cowin shall not be intended or professed in law, unless it be expressely averred. 

10. 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. 

11. Intent, or Intention. The words shall be construed according to the intent of the parties, and not otherwise. 

12. The intent shall be destroyed where it does not agree with the law. 

13. Every agreement under 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. 

14. The intent shall be construed according to the intent of the parties; as upon face of a barrel of beer the barrel is not told, but upon a tablet of a hoghead of wine it is otherwise. 


The intention of a man is not always to be purfued in equity; as if a man fettles a term in fruide for one and his heirs, yet it shall go to the executer; per Lord Nbert, Psab. 1689. Verin. 164. in case of D. of Norfet v. Hig. 

On a treaty of marriage, the man and woman having each of them copyholds of inheritance, they mutually surrender the fame to the ufe of them two and the for- vivor, and the man dies before marriage. On his death, which was about thirty years fince, the woman entered and enjoyed the copul Held ever fince; it was fift to be trufe for the behoof of both of them, and the marriage; and Jeffrey, C. decreed a re-furrender, and an account of the profits from the death of the man. 

Hill. 432. Hammond v. Hicks. 

All deeds are but in nature of contracts, and the intent of the parties reduced into writing, and the intention is to be chiefly regarded. In an act of parliament the inten tion appearing in the preamble shall controul the let ter of the law; and from the regard that the law itself gives to the intention of the party, it is that where there is fine by the law there shall be no donor, and so a rent or recognizance shall not be extinguifhed by leasing a fine or a lease of any part of the land.


15. Intent Caunen & lupon, Words used formerly in appeals to signify the crime being done in the twilight. 

16. M. N. De Ocele appellat f. pro rappt & pace reij frachis de Marta pra. C. Inter canen & lupon, in lond. e facipulis, felicit, Anglica twilight, i. inter dem & ma tem. 


18. This in Herberdeyg, they call the meak bucke, corruption of the word, and in the north also bart, and others between hawk and buzzard. 


20. Intempering, Is where the common of two manors lie together, and the inhabitants of both have time out of mind depauperated their cattle promiscuously in each. 


22. Intemtion, (Interdict & Intemtion) Has the same signification in the Common, as it hath in the Can non law, which thus defines it: Intemtion et concurr. et eftaion. plene administrat. dispensa. And so it is used 22 Hen. 8. cap. 12. & 25 stefeller, cap. 23. Sedum anno relaxatam e interdictum Omnia, quae au- dentur, &c. and in the act of Peter clermont & feriacum anno proemis pratera fuit intestate. Wolf. Hinf. Anno 1357. So that an interdict is a general excommu nication of a whole country or province: *This mentioned in some of our historians, viz. Knightson tells us, Anno 1328, that the pope excommunicated King John, and all his adherents, and * St. Proclus v. William the Conqueror, in the year 1066; and continued nine years and one month; during which time nothing was done in the churches besides baptism and confessions of dying people: The form of it is thus: 

23. In the name of Christ, We (the bishop) in the beh half of the Father, Son and Holy Ghost, and in behalf of St. Peter the chief of the apostles, and in our own beh avor, do excommunicate and interdict this church, and all the chapels thereunto belonging, that no man from henceforth may have leave either of God, or St. Peter, to come into any of the apostles, to finge mass, or to hear it, or in any wife to administer mass, or any divine other thing in any church, or in the church of God's titles without our leave. And whoever faithfully promises to finge or hear mass, or perform any divine office, or receive God's titles, contrary to this interdict on the part of God the Father Almighty, and of the Son, and of the Holy Ghost; and on the behalf of St. Peter, and all the faithful; may be excommunicated and accounted, and separated from all Christian society, and from enter ing into holy mother church, where there is forgive
nests of fins; and let him be anatoma maran atba for ever with the devils in hell. Fiat. satd, fiat. Aban." Do so.

Interest. ([interfet]) Is usually taken for a term, or chattel real, and more particularly for a future term; in which case it is said in pleading, That he is possessed of interest term: But ex terminio in a legal sense, it extends to every kind of right and title over the land, or out of the land; for he is truly said to have an interest in them. Co. on Litt. 345.

The Lord Mountjoy, feied of the manor of Cawford in fee, did by deed indented and enrolled bargained and fell the same to Brown in fee, in which indenture this clause was contained. To wit, Brown did convey and grant and to and with 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 good walled) palfes of the said fman, and to dig turf also for the making of alum. Refolved, that this deed amount to a grant of an interest, and inheritance to the Lord Mountjoy, to dig, &c. Co. Litt. 164. b.

At Guildhall: In ejecution 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 cumber of the city, is, that there ought to be warning given for the space of a year, before the sale was to take place, and by the space of a quarter of a year, where it is under such a rent; the question was, if this cumber gave the party an interest; or only intituled him to an action if he be oufset within the time, as in the common cases of leases for years, or at will, with agreement of quarter's warning; though H. 16 Ch. 1. said, that he had heard that North Ch. 1. ruled upon evidence, that the cumber gave an interest; 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 him to contra; and was referred for his decision. Sirs. 54. Trim. 8 B. 3. B. R. Tyley v. Sedg.

A mortgage is an interest in land, and on non-payment, the ejectment 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 foreclosure, has the absolute ejectment both in law and equity.

Per Pratt Ch. 1. 9 Mod. 195. Reper v. Ratcliffe.

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 dispole of it. But if it had been limited to B. for life, and afterwards to the executors and assigns of B. it would not have been an interest; for they are not parties or privy to the first interest. Bract. 136. Perch. 4 Jac. Clerk v. Sydenham.

A. devised a term to his wife for six years, and made her executrix, and that after the six years ended, then John my fons, if he come home, shall have the benefit of the said lease during the reluf of the said term; and if John does not come home, then William my fons shall have, &c. till John my fons do come home. The wife claims as legatee. William makes his will, and dehives the lease to J. S. and dies. The six years expire, John being not come home; this was held a good devise by the executors, as they are not privy to the first interest. But an interest in the term after the six years expired. C. Jac. 509. Mod. 10 Jac. B. R. Sheriff v. Westham.

Interest of money. Where an eftate is devised for payment of debts, Chancery will not allow interest for book debts. 3 Ch. R. 94. Dolman v. Pritman.

If lands are charged with payment of 2 l. in a full; they are also chargeable in equity with payment of interest for such sum. Hill, 25 Car. 2. Finn. R. 286.

Shipton v. Tyrell.

Interest is recovered by way of damages, where damages are recovered ratioons detentions debits; but not where damages are only recovered exquantum damnum, per Powell J. 2 Salk. 623. Hill, 10 W. 3. B. R. Sweetland v. Squire.

A bill was to foreclose an infant, and an account was decreed. The matter reports 2620l. due: a subsequent order being to compute interest from the report; Wright K. doubted if interest should be allowed for the interest. Abb. 1700. 2 Vern. 392. Barnett v. Edward and Sally &c.

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 and what is due, but to give a further security; however if device or trufte neglects to pay in a reasonable time, he shall after such neglect pay interest beyond the penalty; per Lord C. Cooper 1757. 1 Salk. 154. ".

A term was vested in trustees for payment of all debts he should owe at his death, without preferring one before another, and there were owing debts by bond and by simple contract. Lord C. Hartcourt declared, that by this term only, the simple contract debts became as debts due by mortgage, and consequently should carry interest, as well as the debts secured by bond. Win's Rep. 228, 229. Trim. 1713. Cov. v. Burlington (County.)

Where by 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. Eyfyl v. Acheson.

A recognition was entered into to pay 100l. a year annual to a third person. The annuity was in several years. Decreed per Lord Cooper, that, the recognition being in nature of a bond, the arrears were a debt secured thereby, and so must carry interest from the time they became respectively due. Abb. 3 Geo. 1. Fug. R. 143. Legiste v. Sowell.

No interest to be allowed for cofts. MS. Tab. cites 6 Feb. 1719. Lutler v. Barke.

By marriage-articles the Lady's father was to pay several fums 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 allowance for maintenance, shall be added to the foot of the account, and not carry interest. MS. Tab. cites 1721. Kirwin v. Blake.

Where excessive rates are allowed for work in respect of flow payment, there shou'd be no interest allowed, for the interest is only allowed to supply the want of prompt payment. MS. Tab. cites 27 Feb. 1723. Ditchef of Marlborough v. Strong.

An annuity of 20l. a year was devised by A. to J. S. out of A's personal estate, payable quarterly, and the same being three years in arrear, it was infituted that it should carry interest. But the court said, that this is only done where there are great arrears, but it is not usual to compute interest for so small a sum. Trim. 1723. at the Rolls. 2 Win's Rep. 163. Batten v. Earby.

The arrears of annuity, or rent-charge, are never de- ced to be paid with interest, but where the sum is certain and fixed, and also where there is either a claufe of entry, or running payer, or some penalty upon the grantor, which he must undergo if the grantee fail 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 decreasing the arrears with interest. Per Ld. C. Talbot. Cases in Chanc. in Lord Talbot's time. 2 Abb. 1723. in the case of Lady Ferrers v. Lord Ferrers.

For more learning on this subject, see 4 Vin. Abr. tit. Interest.

Interclauent unpater, (Order interclauentia.) Is that which decides not the cause, but only settles some interning matter, or special point, or matter supplementary to the cause; 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 Interpleader.

Interrogatories. Are questions exhibited in writing to be asked witnesses, or contemners to be examined. P. R. C. 217.

They are exhibited by the party, or directed by the court, to be proposed, and asked the witnesses exhibited in
in the cause, touching the merits thereof, or some inci-

They are either direct, on the part of him who pro-
duces the will, or counter-interrogatories on the behal-
of the adverse party, P. R. C. 219, 220.

A person in continuance appears on an attachment, and
-offered to be examined on interrogatories; the court or-
dered them to be halled and held in 4 days, (that 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 in-
terrogatories in the Crown-office, ought to attend the Maller of the office, who is to examine him within four
days after the interrogatories are put in for him to be examined upon, for the specific dispatch of justice; and he is not bound to attend before 2 L. P. R. 73, cites Anst. 1, R. B. 22.

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. Conv. 8 Hill. 1 & 2. 

Counsel had ordered to not a copy, but a sight of the interrogatories, to which the defendant was to be examined. Chen. Cafi 66. Poiche, 17 Car. 2. Geever v. Balthulys.

A defendant, who after four insufficient answers, was
-to be examined, had by order of the court (for special
reasons) leave for one of her counsel (to take the inter-
rogatories as put in them in point of law) but not to have a copy. P. R. C. 218, Ordered to have a copy. N. Ch. R. 119. 19 Car. 2. History v. Pellop, S. P. No rule, 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 exculpate himself on oath; the other party
-can proceed no further in this matter, but shall take his remedy by action if he will. Conv. 63, Mac. 2. 

Instructions. To fequefter or put in a third hand, viz.
-when any thing is stolen, and sold to another, and after-
wards demanded by the right owner of it in whose
-possession 'twas found; it was usual to sequeft' the thing
to a third person, who was to keep it till the buyer pro-
duced the seller, and fo on to the theft. Leg. donaqu Brompton, cap. 27, 52, 29. Leg. Edu. Conifhor. cap. 25.

Instructions. (Intructions) There are two kinds of
-instructions, one that makes no will at all; another that makes a will, and nominates executors, but they refuse; in
-which case he dies an intructor, and the ordinary commits
-administration. 2 Par.脚f. 327. In former times,
-he who died intestate was accounted damnable, because (as Mat. Par. tells us) he was oblied by the canons, to leave
-281. 4. a freehold, to the poor, for the redemption of his soul, and therefore, who neglected to do it, took no care of his own salvation. They made no difference between a falsid and an instruction; for as in one case, the goods were forfeited to the King, in the other they were forfeited to the chief lord. But because
-it was account ed a very wicked thing to die without making any distribution of his goods to pious udfs, and
-such cases often happened by sudden deaths, therefore by
-subsequent conscriptions, the bishop had power to make
-such distribution as the intestate himself was bound to do; and this was called Elcftmnia rationabilis. Thus in Matt.
-Parish. of one 1106, we read, Si quis fubinde morte vel quilibet cafu p.teccamentum futfiet ut de rebus fuis fiponere non posset, distribuirfam lemnam ejus ecclesiificl fidei abut
-rate: And it was by this means that the spiritual courts came first to have jurisdiction in testamentary cases. Convell, edit. 1727.

In this case, it is pointed out that the executors of J. S. shall be his executors, and he dies, living J. S. there till the death of J. S. this is a dying intestate of A. for in the mean time A. has no executor. Pl. C. 251, 1. by Dyer and Wallis, Poiche, 7 Edw. in the case of Greystoke v. Fae.

So if A. makes J. S. (to be) his executor 4 years after his death; for within the year he dies intestate, and

therefore for this the ordinary has power to commit admi-
-nistration, and it haff never be disproved; By Dyer and
-Wallis, Pl. C. 281, 1. in the case of Greystoke v. Fae.

In all cases of intestates, who die intestate, the
-there, from the death of such executor by dying intestate,
-the first testator dyeth intestate, and for that reason the
ordinary may grant administration. Per Dyer and Wptin, ibid. 281, 1. 282, a.

Where the wording of the Civil law is observed, there
-a case is made partly relatable and partly intestate; that
-see in England, where that eremual bifidues is not
observed, but all immunities enjoy'd, being not obliged to
-any other observance in making testaments than what is
-pure genossen, a man may several ways die partly relatable
-and partly intestate. 1 Gilly, Opsg. Leg. cap. 19, 1. 

16, we read, that one places (tomum annexe qui ille intetate a,) which is absurd and repugnant por cur. It is well; for though one make a will, yet if
-he make no executor he is intestate. Conv. 20. Poiche, 7 Joc. 2. B.R. Anst. See Administrition.

Intails & Crittil, Toll or custom paid for things im-
por ted and exported, or brought in, and fold out. Cowell, ed. 1727.

Intarre maritalem. To drain any low wet marsh or
-bog, and by dikes, walls, &c. to reduce it to herbage or
-pulver ground, to nine or take in. Whence many of the
-lowest grounds in Romney Marsh, are called the
-Immer (from anomalies of the case) and also 1681. intarre
terram, a low ground from the sea.

Intuittus. (Intrusus) Is when the ancestor dies folioed
-of any estate of inheritance, expectant upon an eftate for
-life; and then tenant for life dies, between whole death,
-and the entry of the heir, a Branger both interpole and
-Braunf. ib. cap. 2. to the same purpose.) Thus,
-Intrusus olib qui quisnullum jacem publicam in nec
-scintilla jure, jufjufius vocem incogitandum, quia nec an-
nae nec corporis pecuniae, et cony. with whom agreeid
-Electa, 1. c. 3. feitt. 1 & 2. Britton. c. 63.

The heir of the King's; not, intruding on the King,
garden of no frehold. 4 Ed. 1. j. c. 4. 17 Ed. 2.

13. Ecclesiastical persons entering before payment of first
-fruits demanded intruders. 26 Ed. 8. c. 3. feit. 5.

Bishops, &c. may notwithstanding give infition and
-induction. Idb. feitt. 7.

In information of intuitor the defendant may plead
-the general issue, and retain the prefdion till trial, 21

Intruitor de gard. is a writ that lies where the infant
-within age entered into his lands, and held his lord out.
-For in this case the lord shall not have the writ due,
-and the writ of part of his goods to pious uses, for the
-redemption of his soul, and therefore, who neglected to do it, took no care of his own salvation. They made no difference between a falsid and an instruction; for as in one case, the goods were forfeited to the King, in the other they were forfeited to the chief lord. But because it was account ed a very wicked thing to die without making any distribution of his goods to pious udfs, and such cases often happened by sudden deaths, therefore by subsequent conscriptions, the bishop had power to make such distribution as the intestate himself was bound to do; and this was called Elcftmnia rationabilis. Thus in Matt. Parish. of one 1106, we read, Si quis fubinde morte vel quilibet ca}-fum pteccamentum futfiet ut de rebus fuis fiponere non posset, distribuirfam lemnam ejus ecclesiificl fidei abut-rate: And it was by this means that the spiritual courts came first to have jurisdiction in testamentary cases. Convell, edit. 1727.

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cutor or administrator is bound to exhibit to the ordinary at such times as he shall appoint, a copy, signed, sealed, and witnessed by you for the form. This inventory proceeds from the Civil law; for whereas by the ancient law of the Romans, the heir was obliged to answer all the teflatores' debts, by which means he might have been more prejudicial to many than profitable; for instance, to pay the will, and to bring to the deceased, the frumentary office, ordained, that if the heir would make and exhibit a true inventory of all the teflatores' goods coming to his hands, he should be no further charged than to the value of the inventory. Lib. 11. Cod. de Jure delibrando, &c.

which that 11 H. 8 testify mult of the executors, or such persons to whom administration shall be committed, taking to them two at least, to whom the performance of it was indebted, or made any legacy, and upon their absence two other persons being next of kin to the persons dying, and in their absence, two other beneficents, shall make a true inventory of all the goods, as well movables as not movable, that were of the persons deceased; and the same shall be concluded in the midst, whereof the one part shall be by the executors or administrators, upon oath to be taken before the bishop, &c. delivered into the keeping of the bishop, &c. and the other to be continued in theInventory, and no bishop, &c. shall refuse to take such an inventory fo tendered to him in court, together with his oath to verify the same.

Sell. 3. Provides, That this act shall not prejudice any ordinary, or other person, having or hereafter to have any estate, to assert in the courts; nor may any person or persons before whom the executors or administrators may convene before them execute or refuse the testament, &c. and to bring in inventories, &c.

A. by will, among other legacies, gave C. a young fon 2000l. to be paid at several times, and made B. his eldest fon executor, leaving a very great part of his estate to him. He proved his will, and swore to bring in an inventory, and a time is assigned by the judge for the doing it, but he not doing it, C. cites him before the judge, who is satisfied that there needed not any. The will before the citation was proved per testam, and sentenced to be a good will; the reason why the judge thought the inventory not necessary was, because the two first payments were made, and releases given, and as for the last, B. offered payment thereof to C. and had allowed him 6l. per cent. though the will gave only 4l. Upon appeal to the delegates the whole cause was heard, and sentence given, that there was no need of an inventory. The executors and beneficiaries, brought in a review, and prayed, that the sentence be reversed, and that B. may be compelled to bring in an inventory for these reasons: 1. That there may be found another will in which C. may be executor, and then he will be to seek for the effect. 2. There may be specialties taken on B. in the name of C. and no truth being declared, the same will be conferred an advancement to C. 3. B. the present executor may die intestate, and then the administration de boni non will belong to C. 4. This statute fays, that the executor shall make a true and perfect inventory. 5. B. had sworn to do so, and no judge can discharge with his oath only; and from their arguments, sentence was confirmed by Ed. Ch. J. North, and Wyndham and Raymond J. and Dr. Newton, and Dr. Oxenden, Commissioners of Review; and said, that as to the first three arguments there shall not be presumed another will, or specialties, or dying intestate; and that the intention of the statute was for the benefit of legatees and creditors; and it is found that B. has acknowledged in his hands 25000l. more than enough to pay the debts and legacies. And by the statute the inventory is to consist only of goods, chattels, wares and merchandizes, and not of things in action, whereas the intention of this statute was for the benefit of legatees and creditors; and it would be very disadvantageous to debtors, (as this cafe is) to have their debts discovered, when no necessity requires it; and the ordinary does frequently dispense with a longer time to bring in an inventory, and so he may dif

vol. ii. no. 95.
The declaration, the plaintiff had judgment; and upon error brought, it was assigned for error, that he having two revisions, the one in ten, and the other for years, and that by several deeds, he ought to have brought several actions; but adjudged, that the action was well brought. 2 C. 329. Fyld. v. Lady St. John.

Two lexic for years, rendering rent; one of them after the death of the defendant, and the other 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 lexic, and an action was brought against the defendant in the debt and detine; it was objected, that a joint action would not lie against both, but that the plaintiff had released the other. The interloc was divided; one by assignment, and the other as executor; but adjudged, that the fevance or the land shall not make any fevance of the action. 3 Bult. 211. Ipswich Battile v. Martin and Parker.

In trepass, the plaintiff declared, that the defendant, at an action of slander, because the defendant did not the defecation of the defenent. Trin. 28 H. 8. 84ter 19.

Two brought trespass against the defendant for breaking their clothe; upon Not guilty pleaded, it was found for the plaintiff; but the judgment was reversed upon a writ of error, because it appears upon the plaintiff's own sevance, that the action ought to be brought against two; but if trespass had been brought against one, who pleaded, that it was done by him, and by him alone, the defendant had released, and the plaintiff severally the release; in such case, because the custom doth not appear upon the plaintiff's sevance, but comes in on the part of the defendant, the declaration is good. 1 Loin. 41. Henly v. Brad.

Two cannot join in an action of slander, because the defendant doth not the defecation of the defendants. 8 R. 28. 54ter 19.

Two Persons exhibited two informations at the same time, an action for taking a leaf of lands contrary to the statute of 21 H. 8. 87, adjudged, that he shall not plead to either of them; this is like two plebians brought at the same time for the same action, &c. the defendant shall answer neither. Mor. 384. Pyr. v. Croke.

Tenants in common cannot join in an action of waife against their lessor; but is otherwise in the case of co-partners or jointants. Mor. 34.

The objection was季e interlocutor, and severally with two femaily, 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 consideration his father would surrender a copyhold to the defendant, he promised to give one of his children, and to pay, and the action was brought by one of them; after a verdict for the plaintiff, it was movd 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 defendant had divided interets, and by consequens the action is well brought by one of them. Style 451. Thom. v. the cafe. Sec. 2 Fin. 38. 75.
Joint action. See Jointer in action.

Joint and feudal. An interdict cannot be granted jointly and severally to several defendants regradum adserur, or makes a lease for years, to two jointly and severally, those words (feveral) are void, and they are co-tenants. 5 Rep. 19. Mib. 29 & 30 Eliz. Slingsby's cafe.

A power or authority may be joint and several. 5 Rep. 19. Slingsby's cafe.

Joint words of parties shall, by construction of law, be taken respectively and severally. 5 Rep. 7. b. (2) Mich. 31 & 32 Eliz. B. R. Justice Wyndham's case.

When it appears by the count, that the several co-tenants have, or are to have, several interests or effeves, the several words of such co-tenants, as & cum guility et erum, those words make the covenant severally, in respect of their several interests. 5 Rep. 19. Mib. 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, & scilite erum, this is a joint lease, and the words (several) are void; this is to maintain quiet and avoid contention. So of an obligation made to two & scilite erum, or a grant of the next avoidance to two & scilite erum, to present A. to the said church, is good; for the omission is avoided by refraining both to present A. & B. & C. pl. 1. b. Sedl. Sect. 10. & 11. 459.

Joint execution. See Currunt.

Joint fines. If a whole in fee is to be fixed, a joint fine may be laid, and it will be good for the necessity of; but in other cases, fines for offenses are to be severally imposed on each particular offender, and not jointly upon all of them. 1 Rol. Rep. 33. 11 Rol. 42. Dyer Longer.

Joint invidences. May be sometimes had: If offces of several persons arise from a joint criminal act, without any regard to any particular personal default or fault 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. Venr. 302. 2 Hawk. P. C. 240. When there are one defendants than one in an information, they may exhibit a joint plea of Not guilty; but are to plead and answer, that neither of them, or any of them are guilty. 1 Il. 6. 20. 2 Rob. Adr. 707.

Joint lives. A bond was made to a woman dum la, to pay her mo much yearly as long as she and the bigger 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 lainstead's wife did not live together; but it was adjudged, that the money should be paid during their joint vies, so long as they were living at the same time, &c. Lart. 555. And a person 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 suit for the wife, though it was not paid every year during. &c. It was held, that the payment shall be invaded to continue every year also during their joint vies. 1 Lart. 459. Leafe for years to husband and wife, if they or any of their bodies should so long as they have been adjudged to so long and any other of them, or any of their issue should live; and not only so long as the husband and wife, &c. Should jointly live. Mar 339.

Joint-tenants, (dim. tenentes, or qui conjuncti sunt in tenent, i. e. &c. Tenenium, tit. Formed in suria, 3.) Are those that have any of their bodies by the same preter int, or without partition. 5 Co. on Lib. 2. c. 3. f. 177. These are distinguished from sole or several tenants, from partners, and from tenants in common; and anciely they were called participes, and not bareled. And held in joint and several, and jointly be implicate by others, which properly is common between them and cor- parcers; but joint-tenants have a sole quality of sur- vivorship, which common, if there be two or three joint-tenants, and one hath ill fortune, and dies, then he or those joint-tenants that survive, shall have the whole by survisorship. Crouel, edit. 1737.

Where a feoffment 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 after their deceases, if they shall jointly hold per me & per terra, and shall jointly implead, which property is common between them and corparcers; but joint-tenants have a sole quality of sur- vivorship, which neither coparcers nor tenants in common have. Lit. ject. 277.

Tenants in common is to have 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 alience; so if joint-tenants make several feoffments or gifts in tail, or leases for life, the bequests, donees or leefees are tenants in common. Lit. ject. 292. Co. Lit. 18q. 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, and tenants in common by several titles, or by one title and by several rights; this is the reason, fays Mr. Coke, 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 individuated, and neither of them knoweth his part in several. Co. Lit. 18q. 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 fecor or donor, and may plead it as an original feoffment or gift to himself, and fo is paramount this title of dower, which is not complete till her husband's death: and one book fays, it was the antient course in mortgages to make the estate to two, in order to prevent the mortgagee's wife of dower. Co. Lit. 30. a. 31. b. 32. b. 3 Co. 27. Bras. tit. Dower 4. 84. Cre. Eiz. 503. Perk. ject. 334.

But the wife of a tenant in common shall be endowed; for there no survivorship 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 can have it otherwise than her husband had. Co. Lit. 44. 45. Co. Lit. 34. b. 37. 31.

Also if there be two joint-tenants, and one releashes to the other, this palfeth a fee without the word heirs, because it refers to the whole fee, which they jointly took, and are possessed of by force of the first conveyance; but the tenants in common cannot releas to other person; for it releas to the party to have the thing in demand; but tenants in common have several freeholds, which they cannot transfer otherwise than as persons who are sole feeld. 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 surrender his estate to A. for contribution with him per me & per tanta. 21 Il. 6. 51. 2 Rob. Adr. 861. If land be given jointly to two, upon condition that they shall not alien, and one of them releas to the other, it is no breach of the condition. Winch. 3. Rem. 413.

If there be two joint-tenants of land helden by heriot service, and one dies, the other shall not pay heriot ser- vice; 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 free- holds, yet one tenant in common cannot disable the other, on the contrary, his right rests upon an actual difficil, as turning him out, and hindering him to enter; but a bare perception of the profits is not enough. 1 Salt. 392. Reading's cafe.
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 what things shall survive.

3. At what time the right of survivorship is to take place; and what disposition or conveyance will work a survivorship, and defeat the right of survivorship.

4. Of survivorship by compulsion of laws; and of the sort of partition.

5. How joint-tenants and tenants in common are to sue and be sued; of summons and severance and the remedies they have against each other.

1. Who may be joint-tenants or tenants in common.

An alien and subject cannot be joint-tenants with each other, neither can a corporation, whether sole or aggregate, be joint-tenant with a natural person; and therefore if land be given to two bipeds, 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 right of their churches or corporations; and as such they descend to a joint-tenant, 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. 180. b.

Bodies politic or corporate cannot be joint-tenants with each other, neither can a corporation, whether sole or aggregate, be joint-tenant with a natural person; and therefore if land be given to two bipeds, 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 right of their churches or corporations; and as such they descend to a joint-tenant, 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. 180. a.

Dilexiors may be joint-tenants, and upon the death of one of them the survivor shall have the whole; for the right, foth as it was, continued jointly in them. 21 Ed. 3. 52. b. 2 Rol. Ab. 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 writing futurum interesse. 21 Ed. 3. 52. a. 2 Rol. Ab. 87.

Baron and fee 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. fo? 291.

Also baron and fee 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 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 holden, 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. a.

So if the lord enter on the husband being his villein, and having made such purchase, the wife surviving shall recover the whole. Co. Lit. 187.

It is said, that if a deed of feoffment or grant of a reversion be made to them while sole, and then they intermarry beforeivery or attornment, that they take no moieties; but if they had been feoffed of an ufe by moieties before the 27 H. 8. cap. 10. and such ufe had been executed, by the statute they should have had the eftate of the land by moieties; for they should have the estate in such plent when they had the use. Co. Lit. 187.

And when a person conveys and recovers by the force of a warranty made to them when sole, yet they shall have no moieties in the estate recovered. Co. Lit. 187.

If A makes a feoffment to the ufe of hisifelf and ufe as he shall marry, and afterwards takes a wife, he and his wife are joint-tenants, tho' he were feoffed of a vested feoffment before marriage, and the wife had nothing; for by the marriage the contingent estate vested in them both at the same time by the said limitation. Co. Lit. 188. 1 Co. 104. Dyer 340.

If A purchasewalka in a ufe, and take the patent thus. To himself and his wife, and one 7. 8. for their lives, and the life of the longest lived of them, and a fee to wards J. dies indecd, this purchase is not afeoff; for it shall be presumed to be intended an advancement and provision for the wife; for she cannot be a trustee for her husband, and therefore the ufe shall enjoy the benefit of it during her life; but after her decease, in case she shall survive her, then to a trut for the executor of the husband, and applied towards the payment of his debts. 1 Vern. 69, decreed between Kingdon v. Bridges.

A lease is made to A. and to husband and wife, 915. to A. for life, husband in tail, wife for years; in this case each of the three has a several estate. Co. Lit. 188. a.

If an estate be limited to husband and wife, and the heirs of the body of the husband, they are joint-tenants, and for life, and the inheritance is so executed in him, that if he make a feoffment, this will be a discontinuance to his ufe; but if he execute a common recovery with single voucher, this will bind neither the issue nor any remainders, because his wife was feoffed of the whole jointly with him, and not part, and there are no moieties between them, and therefore it cannot be good for any part; but the feoffment deals with the poifession and gives it away by fidein livery; and therefore to preserve the warranty, this amounts to a discontinuance, and the ufe shall be put to his farmen in defender, and those in re-
fore it is said not to be necessary in articles of copartner-
ship to provide against it. 1 Vern. 217.

The joie accreentendi, or right of survivorship, takes
place only between joint-tenants; as where lands are
given to two men and their heirs, the survivor shall
have the whole for being limited to them and their
heirs, the seffior or donor having 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 intitled to the whole during their re-
spective lives, the survivor having continued longer in
possession was therefore presumed to have done more ser-
vice to the feud, and upon that account was allowed to
transmit it to his heirs; also, says my Lord Chief Jus-
tice Holin. 3 I say, the common law does not love to multiply
tenures. Ca. Lit. 181. 1 Salt. 372.

So if lands be given to two men for life or years, they
are joint-tenants, and the survivor shall hold the whole
for his life, or according to the number of years limited

But if a man let his lands to A. and B. during the
life of A. but if B. die, A. shall have all by survivorship;
but if A. die, B. shall have nothing. Ca. Lit. 181. 6.

A naked trust or authority cannot survive; but a trust
coupled with an interest shall survive together with it.
Ca. Lit. 181. 6, but for this, see Setiff.

If a lease be for the use of A. and B. for their lives, and
the life of the longest lived of them, and they make
partition, and then A. dies, the lessor shall enter into
his part; for B. has no title to it, because the right of
survivorship was lost by the partition, which destroyed
the joint-tenancy; nor will the words to the longest
lives be of any use to E. because they were void at first,
being no more than the law implied in the joint estate.
Ca. Lit. 181. 6. 2 Rol. Abr. 150.

Two joint-tenants of a rent-charge or rent-service,
and one of them dies, the survivor shall recover all the
rentarages which incurred and became due in the life-
time of his companion. 33 El. 6. 20. 4. 15 Ed. 3.
Sijf. 18. 2 Rol. Abr. 86.

Two joint-tenants fow their land with corn, and one
of them dies, the corn sown shall go to the survivor, and
the moiety shall not be to the executor of the proson
decayed; for they are supposed to carry on the cultivation
of the soil 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 shall
go to the executors of the husband, as it seems; for this
land is not cultivated by a joint flock, but is totally the
corn of the husband, and the property of them, and seems not
to be lost by committing it to the joint possession, no more
than if it had been sown in the land of the wife only.
1 Rol. Abr. 727.

So if there be two tenants in common, and one of
them sows the land, and die, his executors shall have the
corn; because they have different interests, and are sup-
pod to cultivate by different flocks, and not by a joint
one. Perk. fett. 523.

3. At what time the right of survivorship is to take place;
and what disposition or conveyance will work a severance,
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 illness, the survivor shall have the whole.
Ca. Lit. 181. 6.

Alfo it is laid down as a rule, that there shall be no
right of survivorship, unless the thing be in jouissance
at the intant of the death of him who first dieth: nihil de
sue honorifico, nisi nihil in re quando jus accreenfendi habitat.
Ca. Lit. 188. 6.

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Therefore if there be two joint-tenants of a rent, and one of them die[s], the tenant of the land, this is a feve-rance of the jointure for a time; for the moiety of the rent is suspended by unity of possession, and therefore cannot stand in jointure with the other moiety in possession, for that if during such suspension one joint-tenant dies, there can be no further jointure.

_Co. Lit. 186._ b.

Two joint-tenants of a lease for years, one of them takes his husband and dies, yet the term shall fur-vive; for though all chartels real are given to the hus-band, if he survive, yet the survivor between the joint-tenants is the elder title, and after the marriage the same continued sole after his death; if the husband dieth, the term shall be dissolved, and not the executor of the husband; but otherwise it is of personal goods.

_Co. Lit. 135._ b.

Although joint-tenants are feized per mixt & per tant, yet to divers purposes each of them hath but a right to a moi-e ty; as to enfeoff, give, or demise, or to forfeit or lose by default in a præcept; 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.

So if there be two joint-tenants, and they both make a feoffment in fee, a gift in tail, or lease for life, _Co._ upon condition, as they bothbreach thereof, then the other enters into the whole, yet he shall enter but into a moiety, because no more in judgment of law perished from him.

_Co. Lit. 186._ a.

If one joint-tenant bargain and sells his moiety, and dies before the deed is enrolled, yet the deed being after-wards enrolled shall work a severance of the jointure by relation the intereft of the bargainer.

_Co. Lit. 136._ a.

But if one joint-tenant bargain and sells all the lands, and before enrollment the other dies, his part shall fur-vive; for the freehold not being out of him, the jointure remains.

_Co. Lit. 225._ a. But only a moiety shall pass; for the enrollment by relation cannot make the grant of any better effect than it would have been if it had taken effect immediately.

_Cros. Jac. 53._

_Co. Lit. 186._ 1 Bail. 5.

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 defeat the joint-tenancy, nor bind the survivor.

_2 Term. 69._ That such an agreement does not bind at law.

_Co. Lit. 184._ b.

Two joint-tenants of a church leaf, one whereas being taken sick in a journey, to fever the jointure and provide for his wife fends for the schoolmaster of the town, (who was the only person he could to come at him,) and acquainted him with his intentions, and directed him to prepare an instrument for that purpos[e]; the schoolmaster drew a kind of deed of gift of the leaf from the sick man to the wife, which he executed, and died; and this being to the wife, and void in law, the would have made it good in equity, but was dismiffed, being voluntary and without confederation.

_Prested. Chit. 124._ 2 Term. 385. S. C.

The proper conveyance by one joint-tenant to another, and what will most effectually sever the joint-tenancy, is a release; but one joint-tenant cannot eneoff his companion, because they are both already feized per mixt & per tant; and this manner of conveyance putting by livery, cannot operate, so as to give him what he already has; but tenants in common cannot release to each other; for a release supposes the party to have the thing in demand, but tenants in common have several difficient freeholds, which one cannot transfer to the other without the fo-lemony of livery.

_22 H. 6. 42. k._ Perk. Jitt. 193._ 193._

But tho' a release 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 release; for they having found the substantial part, the court is to apply the words according to the opera-
tion they have in law; but every such conveyance must be pleaded as a release.

_1 Cott. 78. 1 Sir. 452._ 2 Saund. 56. 2 Keb. 641. Raym. 187._ S. C. Cifter v. Wiltins. 4 Mond. 151. S. P.

So if there be two joint-tenants for life, and one is a feme covert, and the Baron and feme levy a fine to the moieties, and the Baron thereby grant suit & squires in the land for the life of the wife, upon the death of the other joint-tenant the lef[or] may enter, for the fine in-curred by way of release, and then the other joint-tenant must have claimed the whole from the first feoffment, if he could have had the whole but for his own life.

_Roll. Abr. 193._

_Cro. Jac. 695._ Engage v. Scouler; 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 preft, amounts to a feoffment and release.

_Cartb. 505._ 1 Salt. 42. S. C.

If there be two joint-tenants of a rent, the one may release to the other; but if the rent be behind, the one cannot release his interest in the earriages to another.

1 Lom. 167.

One joint-tenant or tenant in common may let his part for years or at will to his companion; for this only gives a moiety of the lands, which, when he dieth, if he had but a right to the moiety thereof, and he may contract with his companion for that purpose, as well as he may with any stranger.

_Co. Lit. 186._ a. Owen 102.


A release or severance between joint-tenants of a freehold must be by deed, because by the notoriety of infeffure they take it jointly; and to alter that, a mat-ter of feeility is required, which is a deed; but tenant in common may make a partition without deed, because that is only a feting out by metes and bounds, according to the ift infeffure, which gave each of them the power to make a partition.

_Co. Lit. 168._ 1 Roll. Abr. 848.

Regularly every disposition by one joint-tenant to his companion must be an immediate disposition; for the surviving joint-tenant claiming the whole by the original infeffure, the whole must defend to him, unless his companion has disposed of it from him in his lifetime.

_Co. Lit. 168._ 1 Roll. Abr. 848.

But if two joint-tenants are in fee, and one let his moiety to f. S. for years, to begin after his death, this is good, and shall bind the other, if he survive, because this is a present disposition, and binds the land from the time of the lease made, so that he cannot after avoid it.

_Co. Lit. 135._ a.

_But a devife for years in such manner by one joint tenant will not bind the other furviving, because that is a no preft disposition, nor binding on the devifor himself in allmash as he may revoke or cancel his will, and b detroy that devife._

_Lit. feft. 287._ 2 Roll. Abr. 848.

_Als if there be two joint-tenants of lands, and one of them devifes away that which belongs to him, and dies this is a void devife, and the devifee takes nothing, be-cause the devife does not take effect till after the death of the devifor, and then the furviving joint-tenant take the whole by a prior title, sec. from the first feoffment but in this case, the devifor furviving the other joint tenant, then the devife is good for the whole by furvive-ship, and then the words of the will are sufficient to car the whole effate; besides, at the time of making the will, tho' he was not sole tenant, yet he was feized per mixt & per tant, and it is impossible to fix upon any partic-ular part which he meant to devife, because he could no then call one part of the land more his own than the other, and the most genuine construction seems to give the whole land, since he was feized per tant of it at the time of the devife._

_Lit. feft. 287._ Perk. feft. 500.

_Cro. Jac. 152._ 187._ pl. 1074.

Roll. Abr. 186._

If there are two joint-tenants, and one of them furrenders his moiety to the use of his late will, and dies before the furrender is preferred, having made his will this is a severance of the jointure; for being preferred I relates to the time of the first furrender.

_Co. Lit. 59._

1 Roll. Abr. 501.
right of their wives, of any manors, lands, tenements or hereditaments within this realm of England, &c., or the marches of the same, shall and may be contested and compelled, by virtue of this present a7, to make partitions between them of all such manors, lands, tenements or hereditaments, as they now hold, or hereafter shall hold as joint-tenants or tenants in common, by writ de partitionibus faciendis, 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 pursued 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 dereign the warranty paramount, and to recover for the rate as is used between coparceners after partition made by the order of the Common Law.

But before these statutes the writ of partition was confined to coparceners; also it lay against the alience of a coparcener, for a coparcener cannot by her alienation divest the right of her sister to divide the estate, nor can the deftiny of the future a8. But the alien had no such writ of partition, because such alienation 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 separated after marriage into distinct families; and for the same reasons the tenant by seisin alieus, though he had parted all of his estate, could not have this writ, though it lay against him by the surviving coparceners. Cf. Lit. 175 a. 167 a. Dyer 98 b.

But now by force of these statutes, the alience of one person may have a writ of partition against the other parceller, because they are tenants in common. Cf. Lit. 175 a.

So tenant by curtesy shall have a writ of partition upon the estate 32 H. 8. cap. 32. for though he is neither joint-tenant, nor tenant in common, yet being in equity the heir of the tenant by seisin, to whom the estate gives him an alience, he is within the equity thereof. Cf. Lit. 175 b.

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 statute; for the words of the preamble of the statute are, that the alien own not the power to partition, nor can by the laws of this realm make partition without their mutual aliences: Now in this case one of them, viz. the purchaser may have a writ of partition at Common law, and therefore cannot come within the preamble and be disfranchised in this writ and be disfranchised in a writ of partition brought upon it. 1 Ad. 30. 72. 2. Lit. 175 b. Keil. 208. Dyer 128. Besold. 42. pl. 76.

It hath been held, that a general writ by joint-te
tennants, or tenants in common grounded on this statute, and concluding contra foram flatus, is sufficient, without
taking the care particularly, so as to bring it within the
caveat; for the framing of the writ is left to the clerks in Chancery, and must be according to the form which they have devised. Cf. Eliz. 742. 743. and 2d. Eliz. 759. 2d. Laws. 1018. 3d. Laws. 213.

In this writ partition may be had by the view of frank-pledge, together with a manor; for though it be not favorable of itself, nor parible, yet 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; also being possessed with the manor, it may well be entirely allotted to one, and the land in recompense to another. Cf. Eliz. 759. Sir George Mor and Brown v. Onslow.

In this section there are two judgments; the first is, quod partitio fut inter partes prædictas de tenementis pra
dictis, cum pertinentiis. And upon this there goes out a ju

dicial writ to the sheriff to make partition, which re

cives, first the writ of partition and judgment, and then

commands the sheriff, together with twelve men of the

vicinage, &c. to go in person to the tenements to be di

vided.
volved, 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 all to each party their full and just share, and then return the information, and be partitioned, as was said in the writ, which the heirs of the sheriff, and the jurors, whose names are likewise to be returned. Botb 245. Lit. sect. 248. Co. Lit. 167.

When the information is thus returned, upon motion made to the court, the second judgment is given in this manner: It is, because of per. eqv., good partitio fane & habilit in perpetuum tenatur. Co. Lit. 169.

In a writ of partition, if the judgment be given good partitio flux, and thereupon a writ is directed to the sherriff to make partition, no writ of error lies hereupon, for the judgment is not complete till the sheriff's return of the portion. Law runners, in such cases, must be all joint tenants, and their purports are greatly opposed and prejudiced, and the premises are frequently waited and destroyed, or lie uncultivated and unmanured, so that the profits of the same are totally or in a great measure lost; for remedy whereof it is enacted, 44. That after prosefs of pone, 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) and a return of the return to the plaintiff, shall be sufficient, and the plaintiff cannot have judgment for any recoverable lien or right of the action, by virtue of any efface of falsehood or for term 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 days before the day of return of the said pone or attachment; if the tenant or tenants to such writ, or any of them, or the true tenant to the meullage, lands, tenements and hereditaments as aforesaid, shall not in such case, within fifteen days after return of such writ of pone or attachment, cause an appearance to be entered in such court; or if such writ of pone or attachment shall not be receivable; then in default of such appearance, the demandant having entered his declaration, the court may proceed to examine the demandant's title, and quantity of his part and purpart, and accordingly as they shall find his, right, part and purpart to be, they shall have for such sum as shall be given by the court, and shall be subject to make partition, whereby such proportion, part and purpart may be fet 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 same shall be good, and in execution thereof, the court have such authority as other whatsoever right or title they have, or may at any time claim to have in any of the manors, meullages, 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 to the title of the tenants freely let forth.

Provided always, That if such tenant or persons concerned, 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 first judgment entered or in cafe of infancy, coverture, or non insan memories, or another cause, appeal to the king's bench; but all persons whatsoever right or title they have, or may at any time claim to have in any of the manors, meullages, 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 to the title of the tenants freely let forth. 3
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 file to the court an inequality in the partition, the court shall make a partition in presence of all parties concerned, of which partition (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 whatever, except as before excepted.

And it is further enacted, That the same partition shall be admitted in evidence 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 time thereof to give 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 situate, as he is with respect to the tenants or joint-tenants for such part set out severally to the respective land- lords or owners thereof by and under the same conditions, rents, covenants and reservations where they are or shall be divided; and the landlords and owners of the several parts and purparts so divided and allotted as aforesaid, shall give 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, leaves, 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 demandant be the heir-at-law of any tenant constitutionally incapable of being a tenant in possession, they may be cited to appear in the said court, to answer the demands of such tenant in the manner before mentioned, and doth be also ordered and directed by the court, and under the like 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 do diligence to enable them to have the benefit of the said statute, and if any tenant or tenant in possession be capable to be flown to the court upon oath, there and allowed of, or otherwise be 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 Hofmgnger, wherein no idleness, protection, privilege or wager of law shall be allowed, nor any more than one impediment; and in case the demandant doth not agree to pay the sheriffs or under-sheriffs, justices, and jurors such fees as they shall respectively demand for their pains and attendance, the demandant of the same shall return the tenant, then the court shall award what each plaintiff shall receive, having respect to the distance of the place from their respective places, 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 manor, and they make a bailiff thereof, and one of them die, the surviver shall have an action of account, for the addition given unto him for the arrearages upon the account was joint. Co. Lit. 198. a.

So if two tenants in common found their land, and a stranger catch the corn with his cattle, the latter has the right to get the addition to him for the trespass is joint, and shall survive. Co. Lit. 198. a.

Tenants in common may join or fever in debt or covenant for rent; but if they fever, the demand must be de una mediate of the whole rent, and not of a certain sum, which amounts to a moiety. Carth. 289. Mundy and Gurney v. Lord Lovelace. But in an awry they ought to sever. Co. Lit. 198. b.

And as in trespass 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 forging 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-creating of such a nuisance. Cro. Jac. 231. Same v. Barrowd.

A makes a lease, in which the lessee covenants with the lessor, that to the lessee grantor is severable but for a certain moiety to several persons, and lessee affinns to "J. S." in an action of covenant by the grantees of the reversion for not repairing; the question was, if two in common of a reversion could join in bringing an action of covenant against the assignees, and it was held, that they could and ought to join in this case, being a personal action, according to Littleton's 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 uncertain. Mubb. 15 Car. 2. Kiddish and Knight v. Buckley.

Joint-tenants and tenants in common are to join in quare impedit, the first, because they are jointly seised, and claim by a joint title; the latter out of necessity, because the thing is initiis. Co. Lit. 157. b. 2 Enc. 23, 63. Comp. Incumb. 253. and wide Jop. 7 Ann. cap. 13.

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. Hutt. 131. Cro. Jac. 85, 362.

A sues two joint-tenants to B. and C, rendering rent, and C. affinns his moiety to D. and after the rent is aareae, the lessor may bring an action of debt for the rent against B. and D. for the reversion remains initiis. Palm. 253.

If two joint-tenants bring trespass, and pending the action one of them dies, the writ shall abate; if lessor brings against them, for in the latter case the action is both joint and several. Cro. Jac. 19, 4 Med. 249, S. P.

Also where a quare impedit 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. Cro. Jac. 19.

If one joint-tenant refuses to join in action, he may be summoned and severed; but herein it is to be observed, that if the person severed dies the writ abates, because the survivor then goes for the whole, which he cannot do on that writ, where on the covenants and severance are for a moiety only; for 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 suit with the survivor; and the law is the same if such joint-tenants proceed without summons and severance, for since both by the writ might have possibility to recover their moiety, they shall both be joined in the suit, in case of suit with the survivor, 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 procured to enable one to proceed for the whole. Co. Lit. 188.

But in personal and mixed 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 termination and severance, and if they were to have a new writ, it would only give the court authority to go on for the whole. Co. 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 court has authority to try the whole, and so he dies in this case, after the death of his companion. Co. Lit. 197.

So in quare impedit by two joint-tenants, and one is summoned and severed, and the severed person dies, the writ shall not abate, because the advoxation is an intire thing; and he proceeded for the whole after the severance, and so he may be recovered in this case. Lit. 197 b. Dyre 275.

If two joint-tenants bring an affize, and the one is severed, if he be found that the other had goods taken upon the land, he shall recover sole damage for them. 11 H. 4. 17. 1 Leas. 571.

Some joint-tenant or tenant in common is charged 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 joins the tenor to the assize, and pleading the tenant by plena, and the other is right of the action. Moor 466. Cro. Eliz. 554. 8 Jac. 12. 1 Salk. 4. 32. 1 Med. 102. 2 Lev. 113. Carth. 63.

If joint-tenancy be pleaded by one or deed in abatement of the defendant's action, he cannot take a gene­ral averment that the tenant is sole seised, for he might then directly to contradict, and set them aside by a manifest of less force and solemnity than they are; but L may confine the joint-tenancy which the tenant plead afterwards the fine levied, but that the joint-tenant not name released to the tenant before the writ brought, or the both the connexes enounced one who enounced the ten­nant; but at this day, if the tenant had been enounced by deed, and had pleaded joint-tenancy to abate the de­mandant's writ, the demandant might have avered generally, that the tenant is sole seised, for the statute o 34 Ed. 1. de conjunctis feoffatis extends to joint-tenanc­ey deed, though not by fine; but by the Common law that is said not to be allowed that place, when the ten­ant claimed under a deed, no more than when he claimed under a fine; but if the tenant claims by feoff​ment in pais, and pleads that in abatement of the de­mandant's action, the demandant may aver sole tenancy because the feoffment is to be proved once true per partes whole credit is not more alleged by the court than the demandant's. 2 Iff. 529. 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 compa­ny, unless he actually was made him so; but not the 4th 5th and 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 proportion, and against their executors and administrators Co. Lit. 172. a. 156. a. 200. b. 2 Leas. 218. So if two had a ward in common, and one took all the prof­its as bailiff, and the other not, the ward shall have a new writ against the estate, because the feoffment is to be proved once true per partes whole credit is not more alleged by the court than the demandant's. 2 Iff. 529. 534.
It having been determined that at Common law a woman could not be endowed of an use, and might land, before the 27 Hen. 8. being put in use, so that there was no confidence to be had in the donor 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 made from her. For the use of him and his wife for life, or in tail, with what conditions over he pleased; and this seems to have been the original of jointures. 3 Dyer, tit. 221. See Dover, Curtice of England.

But tho' this method was an effectual security to the wife, yet was it no bar to the husband, or his heirs, in barring her of her donor before the 27 Hen. 8. for by the Common law a woman could not be barred of her dower by any assignment or assurance to her of other lands whereof she was not dowerable, (except in the case of dower of stramon relictus, or ex affectu patri, which were allowed to be dower in jointures of themselves, and were a good bar of any other dower,) if such assignment, 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 she recover her dower notwithstanding; she having a right to the third part of all her husband's lands, veiled and hid 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 such release were made, it continued still in being, for want of another proper means to destroy it; and if it still existed, her remedies were open to be recovered by action in possitio; 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 dower, for she is not at this day bound in such cafe; and if it were made by means of this marriage, it was at Common law no bar, for two reasons: 1. Because immediately upon the marriage thereof she had no title to dower, and therefore an estate made to her then could no bar to a right which accrued to her after. 2. Because immediately upon the marriage the right of dower vested in her, and could not be extinguished or barred but by a release thereof; so if such assignment or assurance were by the heir in part, this was no bar either; but if it were by indenture or fine, then it should seem an effopoll to her to demand any other dower, because her title to dower was then complete and certain; and she has by this acceptance concluded herself to demand no more. 4 Co. tit. 1. Ferens's case. Dyer 91. Co. tit. 34. b. 36. b. Dyer, tit. Dover 97. 2 Broun. 132. 4 Co. 55. 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 nits of a jointure, or her husband's nits may defeat her of this provision; and how far she is intitled to the aid and assistance of a court of equity. 3. 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. The maxim 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 afofore laid allowing the wife to claim her dower, and also the benefit of such settlement as was made for her, which being contrary to justice. Co. tit. 36. b. 1. That whereas divers persons have purchased, or have estates 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 the 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 estate or purchase of any lands, tenements or hereditaments
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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 personas, and to their heirs and assigns, to the use and behoof 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 making such jointure made or hereafter to be made, shall be entitled, or 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 the said any such jointure; nor shall demand or claim her dowry of and against them that have the lands and inheritances of her said husband; and if the said dowry be such jointure, then the same shall be admitted and enabled to pursue, 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 elided from her said jointure, or from any part thereof, without any fraud or covin, by lawful entry, action, or by discontinuance of her husband, then every such woman shall be endowed of so much of the residue of her husband's tenements or hereditaments whereof she was before dowerable, as the same lands and tenements so evicted and espoused shall amount or extend unto by."  Sec. 8. Provided also, "That if any wife have, or hereafter shall have, any manors, lands, tenements or hereditaments unto her given or affured 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 said wife after that fortune to override the same her husband in whole time the said jointure was made or affured unto her; that then the said wife no overliving shall and may at her liberty at the death of her said husband refuse to have and take the lands and tenements so to her given, appointed, or affured during the coverture, for the term of her life or otherwise, in jointure, except the same assurance be to her made by act of parliament as aforesaid, and thereupon to have, and take her dower by writ of dower or otherwise, according to the Common law, of and in all such lands, tenements and hereditaments, as her husband was and still feised of any estate of inheritance at any time during the coverture; any thing, &c.

To make a good jointure within this statute, the fix 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 life, the remainder to 7. 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 makes nothing as a wife jointure for dower, but that which came in the same place, and is of the same use to the wife, and though 7. S. dies during the life of the husband, yet this is not good; for every inteire not equivalent to dower being not within the statute, is a void limitation to deprive the wife of her dower. 4 Co. 3. Hn. 51.

So 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. Hb. 151.

So if an estate be made to the husband for life, remainder to 7. 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. Wink 33.

But if an estate be made to the wife, husband for life, the remainder to her jointure, this is a good jointure, not merely asthe words of the statute, for it is within the equity and denile of it. 4 Co. 2.

If any man makes a feantum to the use of himself for life, 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 title; for to be within the cafes of the statute whereby dower is barred, the wife must have a sole property after the death of her husband, Wink 33.

A feantum in fee to the use of the fecoife for life, remainder to the husband of his second son for life, remainder to the other son for the term of the life of the first son, if in either as the son shall take, remainder to the heirs of the foffon; the father dies, the son marries, and dies; the wife is not by this seantum 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. 42

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 religi- nation, is banished, or abjures the realm, the wife shall have her jointure. Co. Lit. 133. Mors 81. 3 Buls. 185. 1 Red. Rep. 490. 2 Perri. 104.

2. 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 or lives of many others, this is no good jointure; for if the survivor lives longer, the same, then it would be no competent provision during her life, as every jointure within the statute ought to be. Co. Lit. 36. 4

So if a term for 100 years be limited to the wife, if the so long live, or absolutely, this is no good jointure; for the statute provides, that when the wife hath an estate for life by coverture, the same shall be barred of her dower at Common law; if the wife hath any greater estate the said an estate shall be voided in it, if the said wife hath no left estate, it is out of the statute. Co. Lit. 35. a.

If an estate be limited to the wife upon condition, her acceptance of such a conditional jointure makes it good; for the statute 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 dower under the statute is a good jointure for the determination by her self. 4 Co. 3. a 3.

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 affent to a jointure made in trust for her, yet it would not be good for the statute only bars the dower when by the devise (which was formerly an estate) is executed in her. Co. Lit. 35. 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 coverture, it seems that a provision of coverture by the wife, tho' by way of feantum 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. a.

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 creation is in satisfaction of part. 4 Co. 5.

Therefore when a seantum was made to a woman a seantum 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 avered that it was for a jointure, and that such seantum was not irreversible, Quan 33, and there said, that it had been so avered ruled between the Queen and Dame Elizabeth.

But a devise or an estate to a wife for the cannot be avered to be in satisfaction of a dower or jointure, unless it be expressed to be so in the will. For there can be no seantum contrary to the will, and there where can
be a sverement contrary to the consideration implied in every devise, which is the kindnefs of the teftator. Ca. Lit. 36, 122. Where one devise left lands to his wife during her widowhood, and died, and the married again, and brought dower, and this devise being pleaded in bar, it was held no bar: 1f. Because a will imports a confinement in itself, and cannot be averred to be in bar of dower, unless it be so expressly declared. 2dly. Dower cannot be left out of the life of the wife, and a third reason may be, that her right to dower cannot be barred by a collateral remembrance, since such collateral remembrance is no proper conveyance of such right. Mor. pl. 103.

A man devised his lands to his wife till her daughter shall have the third part of the land; and to his wife, if she die unmarried, and to her heirs. 12 L. 754. 1st. The devise belonging to the man of Whiteharch, in which man there is the following cufiom, viz. that the first wife of every tenant should have her free bench in all the lands whereof her husband was ever feized during the coverture; the second wife a moiety, and the third a third part so long as she kept her husband above ground. 2. S. in confideration of a marriage and marriage portion, covenants with truftees that within two months after the marriage he would settle all his lands to the following ufe, viz. As to part of the lands, to the ufses of himself and his wife for their lives, remainder to the third part to the wife of himfelf for life, remainder to his fife, &c., with a provifion, that the lands fo settled on the wife should be in lieu of her curfoumft ufe; and one of the points in this cafe was, whether this jointure not being made expressly in lieu of her dower, but only paid to in the provifion, 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 fhe should be obliged to abide by her jointure; and the cafe of Fand. and Long was cited, where a fum of money was fettled upon a woman before marriage for her provision and-land therefore the Blaffer of the Rolls was of opinion the fhe should have both that and her dower but the Chancellor reverfed the decrees; and confined her to her fettlement. Mich. 6 Geo. 2. Jordan v. Savage. 3 Bar. Abf. 226.

6. The eftate must be made during the coverture. This the very words of the act of parliament require, and therefore if a jointure be made to a woman during the coverture in fatisfaction of dower, she may have it after her husband’s death; but if the enters and agrees thereunto, the cufiom 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 in her own right, it is her own act, and she cannot avoid it. Ca. Lit. 36, 122. Bulf. 163.

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 quitting her dower when she was at her own disposal, the can claim nothing but the jointure, and that she has paid away by the fine levied; but if the jointure was made during the coverture, and then she relinquished it by fine, yet the Shail have her dower of the other lands; for the acceptance of a jointure during the coverture is no bar of dower, and the palling of it by fine cannot be construed as acceptance of propert in them, since this is capable of an assignation to her, to bar her dower in those lands. Ca. Lit. 36, 122. Bulf. 163.

The husband after marriage settled lands to the ufe of himself and wife in tail, for her jointure, and during the coverture part of the lands were evedited, and the hus- band died, and wife entered in the coverture, and in a reference off the court of wards to the. Chief Juftices, it was resolved, that she should have a recompence for the part evicted. Ma 717. pl. 1002.

A feignory was granted to the husband and wife, and their heirs, the tenant attors, the husband died, and the feignory lapsed to the wife, and as the husband had settled lands in dower, in bar of which the heir pleads acceptance of homage from the tenant; and this was held a good bar; for though they might have disbarred to such eftate during 4 1.
the coverture, yet by the acceptance of homage the husband concluded herself; and this cove differs from the alignment by the heir in pais and her acceptance; because if he gives her a wrong estate, and the accept thereof, this is no bar of her rightful estate; but here having two titles, either as a purchaser to have the whole, or as a wife to have the third part, her acceptance of the one is defeasible, because fine could not remove both out of the same land. 3 Leom. 272. 3 Ca. 27.

If lands are given to husban 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 ab initio, and if the same shall have landed estates under it; but if an estate is made to thehusband and wife for the life of the husband, remainder to the right heir of the husband, it should seem the can not in the case disagree, because the estate upon the husband's death is determined and gone; though by this con- trivance all women may be deolated of their dower as to estates purchased after the marriage. Perk. 353. 3 Ca. 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 had the circumstances of a remain- der, 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 defeasibility of the particular estate comes in being. Ca. Lit. 29. 6.

As covenants to stand seised to the use of him/herself 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 him/herself and this wife for their lives, as a jointure, the remainder to C. and dies without issue, the wife is re- mitted; for where a later and defeasible, a former and indefeasible, in the same person, there must be a remittance. Ca. Lit. 348. a.

But in this case the wife hath two titles, both wivable by her, the first indefeasible by any third person, the latter 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 the must be in her former title, to save the contention and trouble of the action. Ca. 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 volens, because there are not two titles, the one indefeasible and the other defeasible by a third person, but both equally firm; for the right heir of the husband upon the waver 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 prejudiced by being put to his action. Ca. Lit. 357.

Dyir. 351.

In this 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. 432.

If the wife has an old right before the coverture, and afterwards takes a jointure of the same lands, the shall be remitted. C. Fea. 490.

An estate settled to the husband for life, remainder to the right heirs of the husband, except such of the lands as the husband should devide; this exception is repugnant to the grant, because the settlement might be avoided by the hus- band deviding the whole. Hb. 72.

2. How for the act of a jointress or her husband's acts may affect her of this provisors; and how for she is entitled to the profits of 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 the is so far bound thereby, that if the jointure was made before marriage she is barred to claim dower in any other lands of the husband's; but if the jointure was made during coverture, she may claim dower in the other lands. Ca. Lit. 56. Dr. 358.

But if a wife joins with her husband in a bargain and sale of the land by deed indented and enrolled, yet it shall be for the husband's estate only, and she cannot be examined by any court without writ, and there is no writ allowed in this cause. 2 Inf. 67. 3 Hob. 225.

But if a seise covets joins with her husband in levying a fine to raise a sum of money by way of mortgage, this shall bind her; yet in this cause the does not absolutely depart with her estate for life, but there results a truit to the wife to remain, and to replenish her in her jointure. 2 Chanc. Co. 162.

If tenant in tail of a tract makes a mortgage, or ac- knowledges a judgment or statute, and then levies a fine, and fettes a jointure, the jointree shall hold subject to the mortgage or judgment, in the same manner as if the mortgagee or creditor had been tenant in tail of the legal estate, and after the mortgage or judgment had levied a fine, and made a jointure, because the subsequent decla- ration 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 father, before the estate under that which tenant in tail got by the recovery or fine, and that fine was subject to all the charges he had lain upon it. 1 Chanc. Co. 119, 120.

If a man before marriage articles to settle a jointure on his intended wife, and the marriage is consumed, 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, he and made a jointure ac- curringly, and then the wife delivered up the bond, and the jointure being evicted, the court held that it should become void, with the personal rights of the parties, because there were no creditors affected by it; for the delivery of the bond by a femce covert could not way bind her. 1 Vern. 327. Beard and Nuthall.

So if a jointree brings her bill to have an account of the real and personal estate of her late husband, and to have a satisfaction thereoue, for a debt of value of her jointure lands, which she had covenantated to be and to continue of such value, and the defendant infils that this is a covenant which founds only in damages, and pro- perly determinable at law; tho' it be admitted that a court of equity cannot regularly affise damages, yet in respect of the personal estate they brought in, to make the value of the defect of the lands, and report it to the court, which may decree such defect to be made good, or fend it to be tried at law upon a quantum damnificati. 1 Abr. Eq. 18.

If there be a jointree, and a covenant that her jointure shall be of such a yearly value, and it falls short, then the estate be not without impeachment of wafe, yet the much commit waste so far as to make up the defect of the jointure. Abr. Eq. 224. 2.

J. S. made a fettlement on his edleff fon for life, with remainder to his first and other sons in tail, remainder to his eldest son to appose his, the only fettlement not exceeding 200l. per ann. to any husband he afterward marries, for a jointure, (the father being under an apprehension that he was then married to a woman which the father dislik'd, and had no intention his son should provide for;) the father died, and the son married that very woman, (tho' there was strong presumtive proof the marriage was made that the father dislik'd, and had no intention to make the son provide for;) the father died, and the son married that very woman, and the father having assumed certain lands to truss to his wife for a jointure, and covenants that if they were not of 200l. per ann. value, that upon request made to him any time during his life, he would make them up to much out of other lands in his power; he lived several years, and as he continued resolved to make the son provide for the lands being 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, this is a provision for;
I P S

wife or children was not to be considered as a voluntary covenant, and therefore deemed the deficiency to be the infant circumstances of the case, and her neglect in not requesting it during coverture; for the laches of a sole covert cannot be imputed to her.


If a bill is brought by an heir at law, or any other person, against joiner or defendant, the jointure, unless he by his own act submits to confirm her title, and then he shall, by his motion, or by removing the bill, be abated of the jointure, unless made after marriage. See 14 Vin. Abr. 105. Jointure and Joints.

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. f. 109.

Journeys. Choppers. Were registrars of yarn mentioned in flat 8 Hen. 8. e. 5. whence the first part of the word derived, is somewhat obscure: but choppers are to this time known to be changers; as to chop and change is a familiar phrase. Coutts, edit. 1727. See Chopehtrist.

Journeys are accomplished. (Dicta computata) 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 Latin, variance, or want of form, or by default of the clerk, as for want of a good summons; in all these cases the plaintiff may purchase a new writ, which if it be bought by journeyse accomplata, that is, within as little time as possible after the beginning of the writ, (and the space of fifteen days as 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 it the writ abated by the default of the defendant himself, as by making the name of the tenant or of the will or which it abated for non-tenure of his whole, as it ought, because the first writ was brought without any matter of cause; in all these cases the plaintiff may purchase a new writ by journeyse accomplata. This writ must be bought in the same court where the first writ was, and of the same quantity in that writ contained: it must be between those who are parties to the bill, as where one of the plaintiffs or defendants dies; but in no case where it is but one party: Not will the except where the first writ is served and returned on record. See Co. Rep. 6. fol. 9. Spencer’s case, and 14 Vin. Abr. 61. Journeys accounts.

Joyo facta. By flat. 13 Eliz. 2. The church is made void for not reading the articles; adjudged that there needs no deprivation, but it becomes void pretently by the dispensation. 37 Ldg. Ed. 41. Eliz. B. R. Taver v. Brint and Relaini.

Upon an indulgence for speaking against the book of Common Prayer, Hender J. doubted, whether the judicis of oyer and terminer may give judgment of deprivation, to the statute, says, that the offender shall be deprived of his benefice. Also it does not appear, whether the defendant be the curate of the parish where he refused to pay Divine service; and if he be not, then he is not punishable by the statute. - Gell. 162. 125. Hill. 43 Eliz. Horn’s cafe.

The flat. 5 Ed. 6. 4. says, that he that strikes in a churchyard, shall be excommunicated by 1668, yet that it is to be intended after a sentence declaratory, or conviction; other wise there can be no abobtion. "Cra. E. 919. Hill. 43 Eliz. B. R. Statham v. Tweedt, S. P. Arg. Cro. 680. cites D. 18 Eliz. 275. He does not hand excommunicated until he be therof convicted at law, and

this transmittuated to the ordinary, tho’ it takes away the necessity of any sentence of excommunication. Tent. 149. 23 Car. 2. B. R. Dere v. York.

Iflitch, it frees them how repaired, and minister provided for, 13 El. c. 24.

3d ad argum. To go at large, to eschew, to be at liberty. Coutts, edit. 1727.

In England, an act of parliament (called Popery’s law) made in Ireland in 10 H. 7, it was ered, that all fluers made in England before that time should be of force and be put in use in the realm of Ireland. Co. Lit. 144. b.

Acts of parliament made in England since the act of 10 H. 7, do not extend to the kingdom of Ireland, but all acts made in England before 10 H. 7, do also bind them in Ireland by the said act made in Ireland. 10 H. 7. cap. 22. 12 Rep. 116. Hill. 10. fec.

Lord Coke in 2 Iest. 2. says, that by this law [but there cites it as made 11 H. 7.] Magna Charta extends into Ireland. 4 fol. 351. recites the statute more fully, and says, that acts of parliament made in England since that time, whereas Ireland is not particularly named or generally included, extend not thereto; for though it be governed by the same law, yet it is a distinct realm or kingdom, and hath parliaments there. S. P. Arg. Curt. 150. 269. 221. Overb. 7. 4 & 7. 7 Rep. 23. in Calvins cafe. Tent. 162. 14. In acts of parliament Ireland shall not be bound without express words, though the nature and reason of the act extends to Ireland. Sim. 519. Trin. 6 H. 8 & M. B. in case of Philip v. Bory. That Ireland has its own parliaments, yet it is not absolute, & justice; if it were, Ireland 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 Calmin’s cafe several times. "E. Taugh. 252. Hill. 21 & 22 Car. 2. C. B. per Fauconer Ch. I. in case of Greaves v. Ramp. 5. And ibid. 300. says, It is a dominion belonging to the crown of England. And ibid. 317. That its having a parliament is grattia 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. Soc. 11 Geo. 2. in case of Quay v. Ramsey Ard by flat. 6 Ges. 1. cap. 5. fo. 1. The kingdom of Ireland ought to be subordinate to and dependent upon the imperial crown of Great Britain, as being inseparably united thereunto. And the King’s Majesty, with the consent of the lords and commons of Great Britain in parliament, hath power to make laws to bind the people of Ireland.


A write of error was brought upon a judgment given in Ireland. It would appear, that a day ought to be given by rule of court to the liar, to affine his errors, or else to nonuit him; for the defendant could have no fieri. into Ireland. Tent. 53. Hill. 21 & 22 Car. 2. B. R. Anv.

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 bossep corpus might be sent thither to remove him, as writ mandatory had been awarded to calculus, and now to Jersif. Guernfey. &c. Tent. 357. Micb. 32 Car. 2. B. R. Anv.

If a write 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
not here; neither an original not extant. But the method is to set out a writ, rectifying all the proceedings hereinafter mentioned, viz. Ch. J. B. R. in Ireland, and thereon the execution shall be paid for out all, for though the judgment be affirmed here, yet the law supposes the party complainant in Ireland, for the costs are but accessory to the judgment, and such mandatory writ determines the writ of error here, and reduces the cause in Ireland, per Holt. 12 M. 325. Mit. 10 H. 7. Cert. v. Lynch.

As to the profits of lands in Ireland, a bill here is good, the person being in Ireland; for they are in the persona, but as to partition of lands, which is in the real, he cannot proceed here; for a commission cannot be awarded in Ireland. And a bill for partition is in nature of a writ of partition at the Common law, which lieth not in England for lands in Ireland. Hill. 27 & 28 Car. 2. 11 Lord Chanc. 2 Chun. Cafes 214. Cartwright v. Paton.


Bill as to land in Ireland, the title whereof was under the Act of Settlement there, was exhibited against the defendant here on his coming to England, and a new regis granted, and he was put to answer a contract made for those lands in Ireland, and when he departed to Ireland without answering, he was fined for over by a special order from the King, and made to answer the contempts, and to abide the judgment of this court. Per Prince. Mib. 1682. Fern. 77. cited in the case of Earl of Argylf v. Maujumpt, as the case of Archer v. Prefton.


Troye will lie in England against tenant by the curtesy of lands in Ireland, for a conversion of timber in Ireland, the same being a local action, but otherwise of local actions. 1 Salt. 290. Trin. 7 Am. B. R. Brew v. Hedges. A man may be bent over to Ireland to be tried for a crime there committed, notwithstanding the clause in the habus corpus cli. Gibb. 111. Mib. 3 Gov. 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 bent over. Stran. 842. B. R. in England may reverse judgment given in B. R. in Ireland. Br. 1 forfication, pl. 109. cites 31 Aff. 221. Writ of error in B. R. here, of a judgment given in B. R. in Ireland, is a superfcetas to stay execution there. Cru. 7. 534. Pabo. 17 fac. B. R. The Bishop of O'farie's cafe.

A writ of error was brought to reverse a judgment given in Ireland, and an error in it was assigned, and tried in the county next Ireland. The court ruled the venue to be well awarded. Text. 59. Hill. 21 & 22. Car. 3. B. R. Judges in England are proper expostors of the Irish laws. Per Jeffers C. affiled with judge, Fern. 402. Mib. 1686. Earl of Killarne v. Sir Maurice Esfaiue. An action of debt was brought in the court of B. C. in Ireland, against an administratrix, upon a judgment in the court of B. R. in England. The defendant pleaded in bar a judgment had against himself in an action of debt upon bond in the court of Exchequer in Ireland; and the judgment for the defendant in C. B. and affirmed in B. R., upon a writ of error in the court of B. R. in Ireland, 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 part of England, and 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 the mandatory writs issue there, and it is not a remedy to apply in Vaughn, 290. Besides debt on a judgment is a good action, and must be carried in the county where the judgment was obtained; a storiui, not in a different kingdom. Accordingly the court were of opinion to affirm the judgment; but the cause lieth over for another argument. Mich. 11 Geo. 2. Ovary v. Rumfyle. In Earle term following the plaintiff in error declining to speak to it again, judgment was affirmed, nis, &c.

Parremes shall all do homage in Ireland, 14 H. 3. The King's officers shall not purchase lands there, Ord. pro Statu Hibern. 17 Ed. 1. c. 1. Pursuain reafoned there freely without arreftements, Ord. pro St. Hib. 17 Ed. 1. c. 3. Fees of a bill of grace, Ord. pro St. Hib. 17 Ed. 1. c. 4. Merchants shall carry their goods there freely without arreftements, Ord. pro St. Hib. 17 Ed. 3. c. 3. The marshall's fee for a poiferion, Ord. pro St. Hib. 17 Ed. 1. c. 4. Pardon shall not be granted there without the King's command, Ord. pro St. Hib. 17 Ed. 1. c. 6. Proces shall be under the Great seal or the Exchequer seal, Ord. pro St. Hib. 17 Ed. 1. c. 7. Adixes of expe fij was not to be adjourned but in the king's parliament, Ord. pro St. Hib. 17 Ed. 1. c. 8. The staple places there, and the customs of those commodities, 27 Ed. 3. fj. 2. 1. Liberties granted to the church and people of Ireland, 31 Ed. 3. fj. 1. c. 1, &c. Burdens of the land to be discussed in council, &c. 3 Ed. 4. Act of ordnance not to be inserted in the records. The King's ministers shall put away all private councilors of their own, 31 Ed. 3. fj. 4. c. 9. Inquisitions to be made of felonies, 31 Ed. 3. fj. 4. c. 5. No general pardon to be granted but in parliament, 38 Ed. 3. fj. 10. c. 5. Prelates, &c. to certify the state of Ireland truly, 31 Ed. 3. fj. 4. c. 7. Ministers, &c. shall not give maintenance, 31 Ed. 3. fj. 10. Exchequer not to hear common pleas, 31 Ed. 3. fj. 4. c. 1. Suggestion against officers to be under the English seal, 31 Ed. 3. fj. 4. c. 12. The judices of Ireland in every county shall inquire once a year of debts paid to the sheriffs, 31 Ed. 3. fj. 4. c. 14. Change in the Exchequer, 31 Ed. 3. fj. 4. c. 15. None to be imprisoned under this act, 31 Ed. 3. fj. 4. c. 16. Annual inquiry of the behaviour of officers, 31 Ed. 3. fj. 4. c. 17. The King's subjects in Ireland shall use the same laws with the English, 31 Ed. 3. fj. 4. c. 18. Misdemeanors of clerk of the market how punished, 31 Ed. 3. fj. 10. c. 19. Merchants may repair thither with their merchandise, 34 Ed. 3. c. 17. English who have lands there may carry and re-cancel their goods, 34 Ed. 3. c. 18. To live to their own benefits, 1 H. 5. c. 8. Certain English forced to continue in England, 1 H. 5. c. 8. 1 H. 6. c. 2. 2 H. 6. c. 5. 228
Importation of iron, &c. 2 W. & M. st. 2. c. 4. sect. 14, &c.
Iron (except gun metal) and copper from English seas, may be imported, 5 W. & M. c. 17.
Bar iron may be imported from Ireland, 7 & 8 W. 3. c. 20. sect. 17.
No drawback on cargoes of foreign iron, 2 W. & M. c. 3. 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. 11. sect. 63.
Pig iron may be imported from the plantations free, 23 Geo. c. 2. sect. 29.
Bar iron from the plantations may be imported to Lancashire, 23 Geo. c. 2. sect. 29, or to any port, 20 Geo. c. 2. sect. 16.
Iron works charged with the land-tax, 4 Geo. c. 3. sect. 4.
Iron wire. See Wire.
Iron, in libels, makes them as properly libels as what is expressed in direct terms. H. 215. 1 Haw. 193. 294.
Irregularity, (Irregularitas) Disorder. In the Canon law it is taken for any impediment, which hinders a man from taking holy orders; as if he be bare-boned, not or never defamed of any notable crime, maimed, or much deformed, or has confessed to procure another's death, and the like.
Irretrievable, or Irretrievable. That neither may nor ought to be reprieved or set at large upon forswearing, as The dittoes shall be irretrievable. 13 Ed. 4. cap. 2. see Dittoes.
Irving, A duty of excise granted to that town, 9 Geo. 2 c. 27.
Irwell, (River.) See Rivers.
Ireland, Composition fifth to be taken as usual of subjects travelling into Ireland, 5 El. c. 5. sect. 5. Fishing vessels not to proceed on their voyage to Wemysoy and Island, till the 10th of March yearly, 15 Car. c. 16.
Inglis, (Steen Jieum) A kind of fish-gleue or fish-gum brought from Ireland, and those parts, and used in medicines, and by some in adulterating of wines; but for that prohibited by a statute made 12 Car. 2. cap. 25.
Isle of Ely. See Ely.
Isle of Man. See Man.
Isle of Wight. See Wight.
Ist, (Exempted from the French ijfeur, i. e. emonae) 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 amercements or fines; and sometimes for profits of lands or tenements. Wilf. 2. 13 Ed. 1. sect. 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 these it hath but one significacion, which is the 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 precedes. Ijfe in this significacion is either general or special; general ijfe refers to be that whereby it is referred to the jury, to bring in their verdict, whether the defendant 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, it is called the general ijfe. And if a man complain of a private wrong, which the defendant denieth, and pleads no wrong nor dereliction; Leaves, to proceed to this being put to the jury, it is likewise the general ijfe. Kirklin, fid. 225. See Dut. and Student, fid. 158. The special ijfe 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 quavis juris, or to trial by the jury, if it be quavis facti, 4 Hen. 8. 3. 18 Eliz. c. 12. Co. 4. 1 K.
1. Where the words issue, or heirs of the body, in a will
give an estate by purchase or deficit.

2. Where the words issue, or heirs of the body, in a deed
give an estate by purchase or deficit; and where the same
words are only a description of the persons.

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 son and his heirs, Green-ace to the
eledst daughter and her heirs, and White-ace to the
younger, but if she have no issue, then the issue of
his children die without issue of her body, then the other
surviving shall have total 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
total illam partem give only an estate for life. And per
Grandy J. Tho' it was objected, that such estate for life
in the surviving youngest is divorced by descent of the
fee, as soon as 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-simpler,
for if one of the daughters had died without issue in
the life estate, and had then话 land back to the son and
the other father, there is no coparcenary; for the son has
all the fee, and the moiety of the estate is executed, and
the other moiety expectant, and the fitter has a moiety
for life, and then the devise not void. And per State J.
If both daughters had survied the fons, they should have
fee in Black-ace, but not by the will, but by descent in
coparcenary. 2 Litt. 129. Mich. 29 Eliz. B. R. How-
ston's case.

Devise of 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 reversed in
Cam. Sanc. and a difference taken between such limitation
between children; and to the issue; per Lord Keeper. 2 Clew.
Caye 210. Mich. 27 Car. 2. in the case of Warman v.
Seymore, cited as the case of Pier v. Rorci.

A. devises a term to his wife, and after her decease to
the heirs of her body, and for default, to J. S. The
executor affents to the legacy; the wife dies without
issue; per Finch C. A. meant an entail on the whole
estate which cannot be, because there then should be a perpe-
tuity of a term; and though there be difference in words
when land of freehold is devised to one for life, remain-
der afterwards to his heirs mediatly or immediately, and
where a term is so devised; the difference is in words,
the tenter's meaning is the same, and now estates, joi-
tures and fettlements are of long terms, and a limitation
is between them, &c. Mich. 29 Car. 2. 2 Chit.

And after their decease to their children, are words of
purchase, because they work by way of remainder, and
carry but an estate for life; for they say the word issue or
coparcenary mean an entail; per Finch C. R. 280. in the case of
Warman v. Seyman & al, cites it as adjudged fo. 6

Issue in a will is as much as heirs of his body, yet
sometimes it is a word of purchase; as if a devise be to
a man for life, and after to his issue; and to the heirs of
fuch issue, in such case issue is a word of purchase; the
same law of heir. Skiu. 559. Mich. 6 W. 11 M. B. R.
ic in cafe of Mar v. Parker.

A. devised lands to his second fons and his heirs for
ever, and for want of fuch heirs, then to the right heirs
of A. A. died, the second died without issue, living the
eldest son for adjudged, that the second fons have estate-tail,
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 fons could
never die without heirs so long as his brothers, or any
heirs of his father were living. Therefore the heir at

law in this case shall take by defect, and not by the
will. 1 Salk. 233. Trin. 12 W. 11 B. R. Nottingham
v. Jenner. A pretended title of lands to A. and B. in trust for C. for life,
with power to make leaves, and after C.1s decease in trust
for the heirs male of the body of C. Cooper Ch. de-
creed only an estate for life to be conveyed to C. and
to his fifth &c. sons in tail male. But Harcourt K. rever-
sed that decree, and decreed an estate-tail; though he
admitted that the 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
Culman.

Where the heir takes any thing which might have
vested in the ancestor, he shall be in by defect. Arg.

The word heir does not serve for the name of purchaser
if he be not legal heir, nor the word issue.
The word fons or daughters is often treated so. In such a case of testament
and will, though they are bailiffs. Jnke. 203. pl. 27.

An uce of a term for years to husband and wife, and
to 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,
Chanc. 1700. 32 Car. 2. 1703. Lord kite.

A. poftifted 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 de-
clared to be for a perpetual term of A. and M. and their
children, if A. and M. or any of their issue to him should
be alive, remaining to the heirs of the body of A. on M.
they both died, leaving issue three daughters, B. C. and
D. C. and D. got an assignment of the whole term, and
took administration to A. B. brought her bill. And
the question was, if the should have a third part with
C. and D. And though it was intitled for them, that the
truth of the whole term vested in A. and was execu-
ted in him, and that the daughters, 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 truth of the whole term, as to
the 1700 years was not executed to A. and cited the case of
Oakes v. Chaford, and Thamone v. Cunnon, and the
case of Warman v. Seyman, 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, is a word of limitation, and not of purchase;
and therefore conceived that though in the principal cafe,
the words (heirs) is not properly a word of purchase, yet
they being a particular estate for life, during a particu-
lar time, declared to the heirs, they should execute to A. the
limitation to the heirs of his body afterwards, and to the
issue, by marriage, and to carry it to all the
decease; and that after A's death, the trustees
should execute estates to the person and persons re-
spectively, that should be interested, according to their
respective shares therein; which they did, that the children
took their several shares. 2 Fern. 23. Poff. 1687.

Word v. Bradley.

A. poftifted of a term for years, settles it in trust on
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. A
should take her several shares. 2 Somers. Nov. 1632, mull govern this cafe.
There the like
limitation was adjudged as words of purchase, and not of
limitation, and that on view of that precedent, his lord-
ship had lately decreed accordingly in a like cafe, and
said,
said, it would be in vain to make a decree to be revered on an appeal, and therefore dismissed the bill. 

Trin. 1659. 2 Vern. R. 362. Daffven v. Goodman and Belt. At Common law issue is not a word of limitation in deeds, but a provision of the same law in favor of an heir; for if a feoffment is made to the use of J. S. and his male, this doth not pass an estate-tail. But in wills it is sometimes a word of limitation, and sometimes a word of purchase, according to the settlor's intention appears in the will. 8 Mod. 33. Dryb. 1 Geo. 2. Shaw v. Weigh. In a marriage there was a limitation to A. for life without impeachment of waste, taken and to the use of the heirs male of the body of A. to be begotten, and of the heirs male of the body of such heirs male. The first words (heirs male) are only a description of the persons who are to take, viz. to the heirs male of their bodies. 4 St. Trin. 5 Geo. 1. Tregor v. Tregor. A. on the marriage of J. S. with X. his niece, acting for that the better advancement of J. S. and his intended wife, and the issue of the marriage he would at the time of his death, leave, devise or otherwise convey lands, etc. of 301. a year to the heirs of the body of M. by his niece by his lawful husband, and to their heirs, provided, that if there should be more than one child, A. might dispose thereof to such of the children as he should think fit. A. died, living J. S. and M. who had seven children, and demanded the 30 l. a year, with the arrears from A.'s death. It was objected, that this 30 l. a year being to be left to the body of M. by J. S. (it could not commence 'till A.'s death; for children of both sexes un-umit) and that then all their children might be dead, or otherwise it was uncertain which would then be her heir of her body. But Ld. C. King said, that the court of equity has a greater latitude in construction of articles than of limitations of estates. And that here the words (heirs of the body of the niece, by the husband) shall be construed, (children) and the rather because it is laid jut afterward, and to their heirs; whereas if there be a son of the marriage, it must be his heirs alone that must take; and though in case of daughters only, the words (their heirs) had been proper, yet here are fins, and it cannot be intended that the provision was for daughters only, when not so expressed; and the proviso for preference of any of the children, flies, that all the children were to take, unless A. should make an appointment to any one; and the preamble being, that the issue to be adopted as well as the husband and wife, all be issue born at A.'s death ought to take, and are intended to the arrears from that time. Hill. 1725. 2 Wm. iv. 51. 341. Thomas v. Benett.

In what cases the general issue may be pleaded.

The general issue may be pleaded by persons acting under the 43 Eliz. concerning the poor, 45 Eliz. c. 2. 17. 19. 1 Jas. 1. c. 12. 37. 13 & 14 Car. 2. 12. 27. 10. On the act concerning bankrupts, 1 Jas. c. 15. 16.

Or the Acts concerning sheriffy, 1 Jas. c. 12. 27. 10. 9 Ann. c. 26. 27. 10. 2 Geo. c. 19. 16. 17. 2 Geo. c. 45. 27. 20. 2 Geo. c. 39. 27. 16. 3 Geo. c. 27. 27. 20. Or by peaceofficers, 7 Jas. c. 1. c. 5. 21 Jas. c. 1. 12.

Or in suits on penal statutes, 21 Jas. c. 1. c. 4. f. 4. 5. To informations of uttering after 20 years, 21 Jas. c. 14. f. 1.

Or against profane swearing, 21 Jas. c. 1. c. 20. 19.

Or by clerk of the market, &c. 16 Car. c. 1. 19.

Or by persons executing excise laws, 12 Car. c. 2. c. 23. 10. 35. 12 W. 3. c. 21. 27. 10. 16 W. 3. c. 21. 10. 16 W. 3. c. 21. 10.

Or the laws of culls, 15 & 14 Car. 2. c. 11. f. 6. 8 Geo. 1. c. 18. 26. 9 Geo. 1. c. 21. 27. 11. 2 Geo. c. 35. 37. 37.

Or in actions against collectors of publick money, 14 Car. c. 2. c. 17.

Or prorogus executing the act against impertission of cattle, 20 Car. c. 2. 7. fett. 8. 37. Geo. 2. c. 11. 12.

Or for rebuilding London, 22 Car. 2. c. 11. 11. 8. fett. 13. 3 W. 3 c. 12. 25. 1 Geo. 1. c. 52. fett. 13. 5 Geo. 1. c. 23. 17. fett. 6. 9 Geo. 2. c. 20. 18. 14 Geo. 2. c. 42. 37. 21 Geo. c. 28. 5. 26 Geo. 2. c. 30. fett. 23.

Or the act concerning drapery, 22 & 23 Car. 2. c. 8. 10. 7. 1 Ann. 1. c. 12. 37. 10. 1 Geo. 1. c. 25. fett. 9. 11 Geo. 1. c. 24. fett. 10. 11 Geo. 2. c. 18. 37. fett. 15. 2 Geo. c. 28. fett. 5. 26 Geo. 2. c. 30. fett. 23.

Or the act concerning tobacco, 22 & 23 Car. 2. c. 8. 10. 7. 1 Ann. 1. c. 12. 37. 10. 1 Geo. 1. c. 25. fett. 9. 11 Geo. 1. c. 24. fett. 10. 11 Geo. 2. c. 18. 37. fett. 15. 2 Geo. c. 28. fett. 5. 26 Geo. 2. c. 30. fett. 23.

Or the act concerning tobacco, 22 & 23 Car. 2. c. 8. 10. 7. 1 Ann. 1. c. 12. 37. 10. 1 Geo. 1. c. 25. fett. 9. 11 Geo. 1. c. 24. fett. 10. 11 Geo. 2. c. 18. 37. fett. 15. 2 Geo. c. 28. fett. 5. 26 Geo. 2. c. 30. fett. 23.

Or concerning orphans, 5 W. 3 & M. 1. c. 10. fett. 30. 21 Geo. 2. c. 29. f. 6.

Or concerning debts, 9 & 10 W. 3. c. 7. 7. fett. 6. 11 Geo. 2. c. 12. 37. fett. 3. Or the act concerning imbezillers of national forces, 9 & 10 W. 3. c. 7. fett. 7.

Or by persons acting under malt tax, 1 Geo. 1. c. 2. 2. 2. 16. 33 Geo. 2. c. 23. fett. 24. 33 Geo. 2. c. 23. fett. 61. 11 Geo. 2. c. 23. fett. 11. 12 Geo. 2. c. 33. f. 10.

Or for preventing fire, 6 Ann. c. 31. fett. 6.

Or concerning butter, 4 Geo. 1. c. 7. 7. fett. 7.

Or concerning highways, 4 Geo. 1. c. 7. 7. fett. 7.

Or concerning coals, 1 Geo. 1. c. 57. f. 5.

Or concerning butts, 4 Geo. 1. c. 7. 7. fett. 7.

Or concerning waterworks, 8 Geo. 1. c. 26. fett. 8.

Or concerning orphans, 5 Geo. 1. c. 18. fett. 27. 3 Geo. 2. c. 20. fett. 24.

Or concerning Canterbury, 1 Geo. 2. c. 12. 37. fett. 38.

Or by party sued on contract to induce creditors to sign certificate, 5 Geo. 2. c. 30. fett. 11.

Or by those acting under the act concerning dyers, 13 Geo. 1. c. 24. f. 7.

Or concerning garrisoning, 10 Geo. 2. c. 28. fett. 38. 30 Geo. 2. c. 24. fett. 22.

Or to actions for distress, 3 Geo. 2. c. 29. fett. 3.

Or concerning orphans, 11 Geo. 1. c. 30. fett. 43.

Or concerning garrison, 10 Geo. 2. c. 28. fett. 38.

Or concerning garrisoning, 10 Geo. 2. c. 28. fett. 38.

Or concerning orphans, 11 Geo. 1. c. 30. fett. 43.

Or concerning garrisoning, 10 Geo. 2. c. 28. fett. 38.

Or concerning orphans, 11 Geo. 1. c. 30. fett. 43.

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Or concerning orphans, 11 Geo. 1. c. 30. fett. 43.
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2. 2. 31. 1475. reduced it to every twenty-five years. Of one of our Kings, 1468. 2. 6...
1. In what cases persons may be judges in their own cases.

If a fine be levied by a justice of the King, he himself cannot take the conun:se; for he cannot be his own judge.

This is a ground in the feudal law asfo, as appears in the Preqeditions of Winsacke, cap. 17. fol. 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.

If a man brings an action before the mayor, bailiffs, and freedmann of a ville, and after the mayor is removed, and the plaintiff is made mayor, and after he have recover, this judgment is not erroneous; for the judgment is given by the court, and not by him alone.

If a man, by his own act, be the chief of an island, and he be the judge of it, and he made the plaintiff, and the plaintiff take him for the judg:es, this is not erroneous.

This case is law, but not for the reasons here given.

If A bad a tols, C, d. B. Ris in the said case, per curiam.

If a man be the judge of a thing which concerns himself in interest, and for himself, he cannot be a judge in his own cause; nor can he take the fines; and therefore the judgment is void, because it is void in law.

If A, in the court of the mayor and bailiffs, be the mayor, and A is mayor, and it is not paid in the record, that he was made mayor, or it do not appear in the record that he was made mayor, then it is void.

If the defendant be not found in the record, and the plaintiff be not found to have been a person of good character, to sue on this account, and to take him for a judge, this is not erroneous.

If a man take a writ of error, and then he be made mayor, and the plaintiff take him for a judge, this is not erroneous.

If A, in the court of the mayor and bailiffs, be the mayor, and A is mayor, and it is not paid in the record, that he was made mayor, or it do not appear in the record that he was made mayor, then it is void.

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the mayor's court, unless the mayor could be severed, and the court held before the aldermen. 1 Salk. 397.

2. [March 1701. West v. Mayor of London, 5 Cr. 111.]

A man was surveyor of the highways, and a matter concerning his office coming in question at the feyons, he joined in making the order, and his name was put to the caption. Per Exec. Ch. J. it ought not to be. 2 Salk. 637. Hill. 3 An. B. R. Forham v. Tishing's cafe.


A justice cannot afe a record, nor embezzle it, nor file an indictment which is not found, nor give judgment of death where the law does not give it; but if he does it, is is his office, and he shall lose his office, and shall make fine for misprision; but it is not felony. Dr. Judges, pl. 33. cites 2 R. 3. 9.

No action on the cafe will be against a judge for what he does as a judge. Arg. 2 Rall. R. 199. cites 26 Eliz. and 27 Aff. 73.

A judge indiscriminately condemns a man to death for felony, when it is not felony, in a manor court, which has the franchise of infantifhief; for this offence the judge shall be fined and imprisoned, and lose his office; and the lord shall lose his franchise. These points were resolved in the star-chamber, by an assembly of all the judges there, by the command of King R. III. "Jotn. 1627.

Where judges are limited to the subject of their jurisdiction, and they exceed the limits of their jurisdiction, action lies against them; per Powell J. 2 Law. 1565. Mich. 4 W. & M. cites Hard. 450. Terry v. Hasting.

If plea to the jurisdiction of an inferior court be offered as it ought to be before impeachment, and upon oath, all proceedings after shall be void, and the judge and officer shall be liable to action. Per Powell J. 2 Law. 1567. cites Stat. 1 W. I. 35.

Judge is not answerable to the King, or the party, for mistakes or errors of his judgment, in a matter of which he has jurisdiction. 1 Salk. 397. Trin. 12 W. 3. B. R. Greenwatt v. Barwell.

All misdemeanors of judicial officers are a contempt of the court of B. R. 1 Salk. 201. Pajef. 1 Am. B. R. Aven'.


Judge in Cheshire to be judge of a town is to serve at the lord's court on the jury. Lefcrf's Aut. fei. 302.

Judgment, (Judicium) quod juris dictum, Is the opinion of the judges so called, and is the very voice and fiand of that which is misprision and therefore is always taken for unquestionable truth. The ancient words of judgment are very significant, viz. Considerratum est per curiam, &c. because judgment is or ought to be given by the court, upon consideration of the record before them; and in every judgment there ought to be three persons, viz. Actus, reus & judex: of judgments there be final, and none final. See Co. in Litt, f. 39, and Co. 9 Rep. Downam's cafe. Cawell, edit. 1727.

1. Statutes concerning judgments.
2. When judgments are to be signed and entered.
3. For what causes judgments are set aside.
4. Statutes concerning judgments.
Stat. 24 Ed. 3. 3. 1, cap. 5. At every parliament shall be chosen a prelate, two earls and two barons, which shall have commission of the King to hear by pe-
Indictment for a misdemeanor, was tried three days before the end of the term, and the judgment entered the same term, so that defendant had not enough days to come in arrest of judgment. The question was, whether the entry was regular, and whether it should not have been stayed till the term following; and per *Holl Ch. J.* if there are four days and move between the trial and the judgment, judgment ought not to be entered within the four days in which the defendant was absent, the term, and the party is tried within two or three days before the end of the term, the judgment shall not be entered, tho' there are not four days to move in arrest of judgment; and so he said it was settled in the case of *North v. Lecture.*

Upon conference between *Seguay Ch. J.* and *Sir William Toms Attorney General,* contrary to the report of *Sir Samuel Astrey.* 1 Salt. 77, Pask. 117* t. 3. B. R. Annt.

By the ancient rules of the court, the judgments of one term ought to be entered on the roll before the ebb and flow of the next term; and the last act of parliament for docketing of judgments was only in imitation of the ancient course in aid of it; *per* *Holl Ch. J.* 6 Mad. 154, Trin. 3 Term. B. R. in the case of *Hering v. Croker.*

The plaintiff, by a special injunction out of Chancery, was restrained from signing judgment near 12 months after it was given, to plead, he may, after such injunction, do so without giving a new rule to plead. *Notes of Cases in C. B.* 156, Mich. 6 Gen. 2, *Tebbsam v. Jackson.*


If defendant demands order 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 required by the defendant, and being made out, the judgment was not final. *Notes of Cases in C. B.* 156, Mich. 6 Gen. 2, *Tebbesam v. Jackson.*

The copy 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 flee causa; thereupon it was moved for causa, that the declaration was left in the office of *Cite de Bone.* (parliament to the rule of court made in *Michelson's* term 3 Gen. 2) on the third day after the day of the writ for pleading was out, the judgment was not final. *Notes of Cases in C. B.* 167, Hill. 7 Gen. 2, *Chilton v. Handley* and another.

The writ was returnable *tres Mich.* and an appearance entered by the plaintiff. The declaration was left in the office of November the 6th, and rule to plead then given; no notice of the declaration filed was served upon the defendant November 11th, defendant moved bill term to set aside the judgment, and obtained a rule to flee causa, which was made absolute upon hearing counsel on both sides. The declaration not being delivered de bone effe, was only well delivered from the time of the notice, and before that time no judgment could be given. *Notes in C. B.* 172, Hill. 8 Gent. 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 side the judgment, and on flushing the cause, the court held the judgment to be regular. A summons for time, after rule to plead expired, is not a superfaced or day of proceedings. The judge was imposed upon; he would not have granted the summons.
common, had he known the rule was not. The judge
made it regular, but was set aside on payment of costs,
pleading the general suit, and taking short notice of
trial. *Notes in C. B. 182, 183. Tr. 10 & 11 Ge. 2.
Declaration was delivered with blanks, and rule to
plead given Oct. 22. 80. The blanks were filled up,
and defendant at the same time demanded of the
bond. The 27th at eight in the evening, was over
given, and plea demanded, and the 20th judgment
was signed, which was held irregular, and set aside. De-
defendant ought to have the same time to plead after
over given as remained unexpired of the rule to plead at
11 Ge. 2. Simpsoo v. Dafdid.
It was moved to leave to enter judgment upon an old
warrant of attorney, upon an affidavit that the defendant,
who refrained at Jamaica, was living and in good health,
and had been seen and conversed with there by the person
who made the affidavit, on the 13th of September last.
He faileid from Jamaica very soon afterwards, and ar-
ived at London the 15th of January following. The
motion was granted. *Notes in C. B. 187. Hill. 11 Ge.
In waffe, plaintiff gave a common rule to plead, and at
the expiration of four days without giving a peremptory rule,
filed a judgment ; defendant moved to set the judgment
aside, infilling that a peremptory rule ought to have been
given in a real action ; and of this opinion were the court ;
the place waived, as well as damages, being to be
recovered in the action by the statute of Glenc. cap. 5.
In mix'd actions a peremptory rule is necessary, as well in
real actions, (except repluv) and the judgment was set
13 Ge. 2. Worthwoth v. Huyler.
3. For what causes judgments are set aside.
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
reverce the judgment, nifi, &C., and the counsel of the
defendant in error said, he could not maintain the judg-
ment, and therefore prayed the reversel of it for his
client's convenience, who intended to bring a new action,
by which it was reversed absolutely. 2 Sound. 106, 108.
Pajch. 22 Car. 2. Hiiipp v. Ottrey.
A feme covert who lived by herself, and acted as a
feme fuly, gave a warrant of attorney to congfs a judg-
ment, &C., and afterwards moved to set aside the judg-
ment of covert, but the court would not believe her, but put her to her writ of error. 1 Stat. 400. Mich. 10 V. 3. B. R. Ann.
Upon payment of costs, the court will set 'tide a judg-
ment, th'o he regularly entered, if the plaintiff hath not left a trial ; and so is the common cause in C. B. 1 4 Stat. 402. Mich. 3 Ann. B. R. Sijc. v. Lein.
Stat. 5 Ge. 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 paid for any defect
in form or substance in any part of the proceedings.
Bagges moved to set aside the judgment, upon an affi-
davit of a demand of the bond on the 29th of May, (being the same day whereon a plea was demanded) and
of the service of Mr. justice Farebrother's summons the
same day of oyer, and time to plead. Darrel for plaintiff
opposes the motion, and produced an affidavit that oyer
was not demanded, nor summons served till after the
rule to plead was out ; and the court refused to make
A motion was made against judgment for plaintiff upon
the issue of sad tite record. The case was, Plaintiff had
mffaken commodity in his declaration ; defendant had
pleaded in abatement, and annexed affidavit of the truth
of this plea; plaintiff brought a new action, and the de-
defendant pleaded the former action depending ; upon which
plaintiff of his own head, without leave of the court,
entered a sii experit for balance. The officers were asked
their opinions, who all agreed it to be the ediction and
practice; and the court allowed it. But when another
question arose, whether the plaintiff could have made
such an entry, in case the first plea had not been in abate-
ment, the court held the judgment of the first abate-
ments; but Cape thought it might be in all cases; the
court said, it was impossible to be so, and held it
11 Ge. 2. Offsone v. Haddick.
The defendant's attorney left a note at the house of the
plaintiff that he could not proceed with the double return
affidavit in this manner, viz. I plead nut debt, yours, &C.,
and the plaintiff's attorney without finding notice to the defendant's attor-
ney, 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
such manner as to be left in the office. *Notes in C. B. 156.
It was moved to set aside 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
by plaintiff. After hearing the case, the court held the
plea infilled, that the outlawry not being pleaded fab pede fi-
illis, plaintiff was not bound to accept it, and therefore
might regularly sign judgment, and cited 1 Salt. 217.
Carthew 220. They ordered it to be moved again
and when the motion came on the second time it was
withdruived. The court held on the motion to set the
judgment aside, differs it from the case quoted on the other
side, and quoted Cese's Inst. 128. 1 Lutn. 40. 2 Med.
267. Albin & Bailey. It was replied, that Lord Ch. J.
Holt's words in Carthew and Salloke, go both to pleas in
bar and abatement, where the outlawry is in another
case, C. W. Whipple's Case ancient. Car.
Rogalin 213. 2 Int. 282, quoted [are of] pleas in
bar, not dilatory ; plaintiff cannot take upon him to judge
of the plea in bar; he should apply to the court,
or demurr; rule made to set aside the judgment. *Notes
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. 160. Trin. 7 Ge. 5. Castle v. Stowm.
The writ was returnable the first return day of this
term, where defendant appeared by his attorney, and plaintiff
in Twitlur, 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 que-

tion before the court was, whether in this case the
defendant should have or four days to plead. And the
court held, that pursuant to the rule of court made in
Michaelmas term, third of his present Majesty, in all
cases upon writs returnable the first or second return of
any term, if the plaintiff do not declare in London or
Albiddes, or the defendant lives about 20 miles from
London, the defendant hath eight days time to plead ;
and therefor set aside the judgment. *Notes in C. B. 165.
Mich. 7 Ge. 2. Lawson v. Bradley.
Defendant pleaded a tender, but brought no money
into court ; he gave a rule to reply, and for want of a
replication gave a non prao; plaintiff looked upon the plea as a plea in bar, and money not brought into the
signed judgment after the non prao obtained, and
now moved to set aside the non prao. The defendant
moved to set aside the judgment, infilling that the plain-
tiff could not regularly sign judgment 'till the non prao
was set aside, and of that opinion was Sir George Cape,
but the two other prothonotaries reported the praller
contrary; and the court was of opinion, that the non
prao 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.


In libel, 1 Hawk. P. C. p. 196.


Bribing witnesses to fillde their evidence, 2 Hawk. P. C. p. 445.

For other offences of the like nature against the first principles of natural justice and common honesty, 2 Hawk. P. C. p. 445.

In appeal when the defendant joining battle is vanquished in the course of the suit, 3 Infl. p. 212.

In attaint in civil causes, 3 Infl. p. 222.

Of a corrupt judge, 3 Infl. p. 224.

Of outbreak, 2 Hawk. P. C. p. 446. 3 Infl. p. 214.

Of abjuration, 2 Hawk. P. C. p. 446. 3 Infl. p. 216.

Fillory, tumbril and tumbrelcart, 3 Infl. p. 219.

Where the court may award a fine for 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 help of crafts, Was a trial in ecclesiastical causes, in use long since among the Savages. See Crutty's Church History, fol. 950, 1952.

Infractions and deformations of the ancient and religious laws, in the county palaces of Chiffers, who on a writ of error out of Chirtery are to consider of the judgment given there, and reform it; and if they do not, and it be found erroneous, they forfeit 100 l. to the King by the culson. Dyce 348.

Judge of Saints; So Pobhzo Virgin calls Empson and Dollis, who were employed by Hen. 7. for taking the benefit of penal statutes, and were put to death by Hen. 8. See Jurid. Herb. H. 8. fol. 5, 6.

Judicial decisions, opinions or determinations, as far as they refer to the laws of this kingdom, are for the matter of them of three kinds, 18. They are either such as have their reasons fingly in the laws and customs of this kingdom; as who shall succeed as heir to the ancestor; what is the ceremony requisite for proving a freehold? what estate, and how much the wife shall have for her dower? And many such matters, wherein the ancient and expressd laws of this kingdom give an express decision, and the judge Feem only the instrument to pronounce it; and in those things the law or custom of the realm is the only rule and measure to judge by, and in reference to those matters, the decision of courts are the conservatories and evidences of those laws. Or 3dly, They are such decisions, as by way of deduction and ilulation upon the premises for which they were pronounc'd; as for the purpose, Whether of an estate thus or thus limited the wife shall be endowed? whether if thus or thus limited, the heir may be barred? and infinite more of the like complicated questions. And herein the rule of decision is first, the Common law and custom of the realm, which is the great foundation that is to be maintained; and then authorities of decisions of former times in the same or the like cases; and then the reason of the thing itself, 3dly, Or they are such as seem to have no other guide but the common reason of the thing, unless the fame point has been formerly decided, as in the exposition of the intensity of the words, etc., where the very sense of the words, and their importations and relations give a rational account of the meaning of the party, and in such cases the judge does much better herein, than what a bare grave grammarnian or logician, or other prudent method for it there have been former resolutions, either in point, or agreeing in reason or analogy with the case in question; or perhaps also the clause to be expounded is mingled with some term or clauses that require the knowledge of the law to help out with the construction or exposition; both which do and will happen in the same case; and therefore it requires the knowledge of the law to render and

Vol. II. No. 57.
Injuria, Injure. A writ which lies for the incurrence, whose predecessor hath alienated his lands and tenements. The divers uses whereof is in Finis. Nat. Bret. fol. 48.

By Stat. 14 Ed. 3, c. 17. Parfons, vicars and wardens of chapels, shall have their writs of juris utrum of tenements annexed or given perpetually in alms to vicarages to be administered by another by other writs in their case as parsons of churches or prebends.

Jurisprudence, The journal or diary of accounts in a religious house. —Ubi pater per jurata loco ante—ubi pater per juridicium jurata. Paroch. Antiqu. p. 571. From the French juris, a day; whence this word was at first properly applied to the conduct of a disputant in argument or debate; the word in a strict and original sense; for they call one day's travel or work at plough, a journey or journe. Hence a journeyman is one who works by the day. —Curs. edit. 1727.

Jurisdiction, A journey, or one day's travelling. —Curs. edit. 1727.

Jurisprudence, (Jurisprudence.) One of those twenty-four or twelve men, which are sworn to declare a truth upon such evidence as shall be given them touching the matter in question. —Curs. edit. 1727. See Juris.

Jurisdiction, (Jurisprudence.) May be derived from the Latin juris, a law, and signifies either twenty-four or twelve men, sworn, as a body, to decide the matter in question, or, as they are declared, to decide upon such evidence as shall be given to them, touching the matter in question. And observe, that in England there are three sorts of trials, viz. one by parliament, another by battle, and the third by assize or jury. Smith de Rep. Ang. lib. 2, cap. 5, 6, 7. On the two former read him, and see Battle, Court, and Parliament. The trial by assize, (be the action civil or criminal, publick or private, properal or real,) is referred for the fact to a jury, and as they find it, so passeth the judgment, and the great favour that by this the King doth show to his subjects, more than the Princes of other countries. So you may read in Glanvill, lib. cap. 7, that he call it, Regale benefici, elementi principii de compositione populi, id est, humanum et firmum integrum, quod equae hominum et jurium integritatem habere et conservare, et utique in belli faction, et in jurisdictione, et utique in proprium et in ceterum eorum decreta. Hence the jury is not only used in courts of justices errant, but also in other courts and trials, and may be required of the judge, if he thinks the matter incapable of decision in any thing touching his office, he doth it by jury or inquest. If the counsellor enquire how a subject found, dead, came to his end, he useth an inquest. The judges of peace in their quarter-seels, the sheriff in his county and town, the bailiff of a hundred, the warden of a court, etc. have it in their power to take and declare any cause between party and party, they do it in the same manner: So that where it is fait, all things are triable by parliament, battle, or assize, in this place any cause was taken for a jury or inquest, impanelled upon any cause in a court where this kind of trial is used; and though it be commonly supposed that this writ of ending and deciding causes proceeded from the Saxons and Britons, and was of favour permitted to us by the conqueror; yet we find by the Grand Counciurary of Normandy, cap. 24, that this course was likewise used in that country; for assize is in that chapter defined to be an assembly of wise men, with the bailiff of a certain place, at a time as assigned forty days before, whereby justice may be done in causes heard in that court of this sort of this court also, and those knights of Normandy, Johanes Taker maketh mention in the Roman of the title De Militari Tegumentis, in infinit. This jury, though it appertaineth to morts courts of the Common law, yet it is most notorious in our own courts of assize, and is an imitation of that called the Great Assizes; and in the quarter-seels, and in them in morts of which we are called a jury, and that in civil causes; whereas in other courts it is termed another inquest, and in the court-baron, a jury of the homine; In the general assize, there are usually many jur. jur. and there are found
Likewise the authority of this trial, and in being peculiar to us, have been taken notice of, as matters which reflect honour on our constitution; for where there were anciently several or methods of trial, such as by battle, ordeal, &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.

§ 1. Statutes concerning juries.

1. Who are exempted from serving on juries.

2. Of the several kinds of juries, and jury process; and manner of compelling a jury to appear.

3. By whom the jury process shall be executed, and the jury summoned; in what time such process, and what number of juries, are to be returned.

4. In what cases and in what manner special juries are appointed.

§ 2. Statutes concerning juries.

Stat. 26 Hen. 3. cap. 14. Concerning charters of exemption, and liberties, that the purchasers shall not be impaneled as affifts, jurors, or any other party, to try suits or actions by virtue of the charters referred

Stat. 3 Edw. 3. cap. 58. In one affift no more shall be summoned than twenty-four; and old men above seventy years, and such as be sick at the time of the summoned, or not dwelling in that country, shall not be put in juries or petty affiplies; and if such affifts and juries be taken out of the hire, none shall pass in them but those that have been sworn in forty years at least, except such as be witnesses in writing; being all this franchise extend to great affiplies; and if the sacrific or barfilts 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 juries alleged to take affifts shall have power to hear plaints as to the articles in this statute.

Stat. 21 Edw. 2. cap. 1. No sacriff nor barfilft shall put in any recognize which shall pass out of their proper bailiffships any, except they have lands to the yearly value of an 1000s. at least. And this statute shall not restrain the laft franchise, or the franchise of the heirs, as above: so that within the county before juries of the King, no barfilft is signified to the taking of inquests or other recognizances, shall not be impealed except be have lands to the yearly value of 40s., and likewise favoring that before juries errant, and also in cities, boroughs and other market-towns, it shall be done as it hath been accustomed.}

Stat. 28 Edw. 1. cap. 3. No sacriff nor barfilft shall shew impanel in juries too many perfon, nor otherwise than is ordained by the statute, and they shall put in the jury such as be next neighbours, most sufficient and least frivolous; and he that otherwise doth, and is attended thereunto, shall pay the plaintiff his damages double, and be grievously amerced to the King.

Stat. 33 Edw. 1. cap. 4. Of inquests to be taken wherein the King is party, notwithstanding it be 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 do for the King will challenge any of those jurors, they shall again a new cause, and the truth of the challenge shall be inquired of.

Stat. 5 Edw. 3. cap. 10. If any juror in affiplies, juries or inquests, take of the one party or the other, and be thereof estranged, he shall not be put in any affiplies, juries or inquests, and the barfilft shall be commanded to prifon, and further restrained to the King's will, and the jurors before whom such affiplies, &c., shall pass, shall have power to inquire and determine according to this statute.
Stat. 25 Edw. 3. stat. 5. cap. 3. No indictment shall be put in inquests upon the deliverances of the indirecutes of felony or trefpass, 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 procured: and the sefiffors, coroners and other ministers, which do against the time, shall be inquested before the justices take the inquest, according to their trefpafs, as well against the King as against the party.

Stat. 34 Edw. 3. cap. 8. In every plea whereof the inquest or affize doth pass, if any of the parties will sue against any of the jurors, that have then of him, or of either, 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, be that suit shall have half the fine: and the parties to the plea shall recover their damages by the taxing of the inquest; and the juror for 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 fuit in the form aforesaid.

Stat. 28 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 procès 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 be that will sue shall have the one half, and the King the other; and all imbracres to procure such inquest for gain shall be punished as the jurors; or if the juror or imbracer have not whereof to make gree, he shall have imprisonment for one year; and no justice or other minister shall incite any person in the points of this article, but only at the suit of the party or of other.

Stat. 41 Edw. 3. cap. 11. No inquest but affizes and deliverances of goods 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 sefiffors shall array the panels to affize four days at leaft before the sefions of the justices; upon pain of 20l. and bailiffs of franchises shall make their answer to the sefiffors five days before the sefions, upon the same pain: and in all panels arrayed by the sefiffors or bailiffs shall be put the most substantial people and worldly of faith, and not usurer, and the sefiffs shall not appear therein: no indictment shall be made but by inquest of lawful people, returned by the sefiffors 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 perfon shall pass in any inquest upon trial of the death of a man, nor betwixt 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 it that be challenged by the party.

Stat. 3 Hen. 6. cap. 4. Every juror that shall be inquested and returned within the county of Middlefied in the King's courts, at every fourth day of the return shall be demanded; and all persons impanelled in those courts, that appear at the said day, their appearance shall be recorded; and every default, effion and other delay of any plaintiff or defendant in any perfon returned by him be declared and allowed, as before this statute.

Stat. 1 Ric. 3. cap. 4. No bailiff, nor other officer, shall return in any panel any perfon in any the sefiffors' turns, but such as be of good fame, and having lands of freehold within the counties, to the yearly value of 20l. at hault, or copihould, to the yearly value of 20s. 8d. and if any bailiff or other officer return any perfon contrary to this statute, he shall lose for every perfon so returned 40s. and the sefiffor other 40s. the one half to the King, and the other half to the party that will sue by action of debt, &c. and every indemnity before any sefiffor in his turn otherwise taken shall be void.

Stat. 11 Hen. 7. cap. 21. stat. 1. No perfon shall be impanelled in any jury in London, except he be of lands and chattels in the said city, and no 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 in lands and goods to the value of a hundred marks, and the same cause of challenge shall be admitted as a principal challenge, and be set aside; and if any justice appear in any jury before any of the judges of the same city, make default at first summons, shall lose in fines 2d. and at the second default 2s. and so at 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 sefiffors court shall be levied to the use of the sefiffors toward their free farm.

See the rest of this act in Attainit.

Stat. 3 Hen. 8. cap. 12. All panels returned, which be not at the fuit of any party, that shall be made by every sefiffor and their minifteris above any juries of good delivery, or justices of peace in their fells, to inquire and take out of names, by the direction of the justices; and the justice or other minister shall command every sefiffor and their minifteris to put other persons in the panel by their directions: and if any sefiffor or other minister do not return the panels so returned, such sefiffor or minister shall for that, shall be one half to the King, and the other half to the party that will sue for the same by action of debt, &c. and the King's pardon shall be no bar against the parties that shall sue.

Stat. 4 Hen. 8. cap. 3. stat. 2. For all fuits to be lost in the mayor's court, according to stat. 11 Hen. 7. cap. 21. it shall be lawful to the mayor to disfrain; and in like manner in the sefiffors' court, to be lawful to the sefiffors to disfrain for such sefiffors lost in their courts.

Stat. 4. The sefiffors 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, perfon being citizens, having goods to the value of 100 marks, to try the fuits joined in such action, as other perfon having lands of the yearly value of 40l.

Stat. 5. The sefiffors of the fad city shall return upon the first disfrfs upon every of the jurors 20l. and upon the second disfrfs 40l. and upon every disfrfs after that the double, till a full jury appear; and the sefiffors that shall default or omit to return the first disfrfs shall forfeit 12l. the one half to the King, and the other half to the party that will sue.

Stat. 5 Hen. 8. cap. 5. stat. 3. The âot 4 Hen. 8. cap. 3. shall be expounded, that the sefiffors be bound to return at every first disfrfs of nisi prius, to be had at St. Martin open, at every of the jurors, 20l. and upon the second disfrfs of nisi prius, 40l. and upon every disfrfs of nisi prius after that the double, till a full jury appear; and no sefiffor shall forfeit by force of the said statute for any return, except only upon writs of disfriffs before justices of nisi prius within the said city; and upon all other processses awarded out of the said courts or Exchequer, it shall be lawful to the sefiffors to make their returns as they were wont to do.

Stat. 24 Hen. 8. cap. 19. stat. 1. Every perfon being the King's natural subject, who do enjoy the liberties of any city, borough or town corporate, where he dwell, being worth in goods to the value of 40l. shall be inquested, and return the land and goods of freehold and delivery for the liberty of such cities, &c. albeit they have no freehold.

Sect. 2. Provided that this âot do not extend to any knight of escheator dignity.

Stat. 35 Hen. 8. cap. 4. stat. 1. In every sefiffor's court and every action within such persons, where the party is either the reversion or remainder of land, and if the sum be to be recovered by action of debt, &c. to be directed 402. b.
veneri facias shall be in this form: Rex, &c. Præcipitamus, &c. quod veniri se facias, &c. 13. libris et legales personas, &c. de B. quorum quidem habet habent quidem ad terras, tenementorum vel ridulum per annum ad minus, per qua rei veitis multas scrib potest. Et quicue, &c. And where it is not requisite that the perons shall defend 14d. by the year of freedom, the writs of veneri shall be to no more than five, in the hundred, where the venue is lent; upon pain to forfeit for every person that cannot defend 42y. by the year, 20l. and for every hundred omitted in such return, 20l. and in every veneri wherein the clause quorum quidem, &c. shall be omitted, the thurf shall not return any person unless he may defend 42y. by the year of freedom, out of ancient demeane, within the county; and also shall return in every such panel fix hundredors, or be in many places of the hundred, where the venue is lent; upon pain to forfeit for every person that cannot defend 42y. by the year, 20l. and for every hundred omitted in such return, 20l. and in every veneri wherein the clause quorum quidem, &c. shall be omitted, the thurf shall not return any person unless he may defend 42y. by the year of freedom, out of ancient demeane, within the county; and also shall return in every such panel fix hundredors, if there be so many, upon like pain. Setl. 4. Upon every first writ of hubres corpora or diergnges with nifi prius, delivered of record, the thurf shall return in issues upon every person impaneled at the time of the return, or within one year next before, or some other addition by which the party may be known; or any juror within any liberry, with other addition than such as shall be delivered to him by the bailiff of 4 N
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the liberty; nor any bailli 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 fines against any juror shall be delivered without due addition of such addition as is put in the original panel or tales wherein such juror shall be returned; and no under-sheriff, bailiff or other person, shall levy any fines of any other persons than of such as by the said effect is of right charged with the said fines; upon pain that every clerk that shall write or deliver any force relating to any other persons extending contrary to this act, shall forfeit to the Queen five marks; and to the party given five marks.

Sect. 3. Judiciles of eyre and terminer, judiciles of affife and judiciles of peace, as well within liberties as without, shall have power to hear and determine the offences aforesaid.

Made per protocol, 30 Eliz. cap. 18. sect. 32.

Stat. 4. Will. & Mar. cap. 24, sect. 15. All jurors (other than framers upon trials per medietatem lingue) shall be returned for trials of fuses joined in the courts of King's Bench, Common Pleas or Exchequer, or before justices of assize of nisi prius, quer and terminer, gaol-delivery or quarter-feelions in any county of England, shall have within the county 10 l. by the year of freehold or copyhold, or ancient demeene, or in rents, in fee-simple, fee-tail or for life; and in every county of Wales every such juror shall have 6 l. by the year as aforesaid; and if any new bailli, affize or other person shall be a guest in any county of England or Wales, and the party returned shall be discharged upon the said challenge, or upon any such oath; and no jurman's fines shall be faved but by order of court, for some reasonable caufe proved upon oath; and all fines shall be duly effectuated and levied; and the writ of venire assizes for the returning of jurors in counties of England shall be after this form: Rem. &c. Non officio, &c. rem. &c. quer in quos, &c. and the writs of returning of jurors in Wales, shall be in the same manner, altering only the word decem for five; and the sheriffs shall not return any person, unless he have 10 l. or 6 l. respectively, by the year, at least, in the county; upon pain to forfeit for every person 5 l. to their Majesties.

Sect. 16. No sheriff or bailli of liberty shall return any person to be returned, unless such person shall have been duly summoned six days before the day of appearance, nor shall take money or reward to excufe any juror; upon pain to forfeit 10 l. to their Majesties.

Sect. 17. Saving to all cities, boroughs and town corporates, their ancient usage of returning jurors.

No sheriff or bailli shall be lawful to return any person upon the tales in England, who shall have within the county 5 l. by the year, and not otherwise.

Sect. 19. It shall be lawful to return any person upon the tales in Wales, who shall have within the county 3 l. by the year.

Sect. 20. No fee shall be taken by any sheriff, clerk of affise or other person, upon account of any prætre, returned upon pain of 10 l. one moiety to the procurator, and the other moiety to their Majesties, to be recovered by action of debt, &c.

Sect. 21. No writ de non ponenda in affisse & juratte 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 1668, and to the end of the next session of parliament, and afterwards continued along with this act, as the same was continued, by 7 Will. 3. cap. 32.

Stat. 7 Will. 3. cap. 39, sect. 1. If any plaintiff or defendant in any cause in the courts at Westminster, which shall be in assize, shall sue forth a venire facias, upon which any bonasti corpora or disjungit with a nisi prius shall issue, in order to 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 the jury is before that act so directed) the plaintiff, &c. whenever he shall think fit to try the issue, shall sue forth a new writ in this form: Shall de novo venire facias de novo, &c. of &c. of &c. de novo in juratu, &c. of &c. de novo in juratu, &c. of &c. de novo in juratu, &c. with the same fees, &c. as if the writ were returned and filed, a bonasti corpora or disjungit with a nisi prius shall issue thereupon (for which the ancient tenor shall be taken, as in case of nisiprius), &c. defendant, &c. upon which the plaintiff, &c. may proceed to trial, as if the same were a nisi prius, &c. on which the sheriff had given, &c. and prosecute the same by bonasti corpora or disjungit, with a nisi prius, as though there had not been any former venire issued and returned, and so tenant to the issue.

Sect. 3. In every writ of bonasti corpora or disjungit, with a nisi prius, where a full jury shall not appear, or where the jury is to remain unasked for default of jurors, the sheriff shall upon the awarding the tales, return freeholders or copyholders of the county, who shall be returned upon some other panel to serve at the same affise, and not others, if so many of the other persons be present; and either of the parties shall have his jury for the same affise; and the sheriff, or other person accounting for, shall deliver to the sheriff, or other person accounting for, the sheriff, and the sheriff shall return upon the tales, return freeholders or copyholders of the county, who shall be returned upon some other panel to serve at the same affise, and not others, if so many of the other persons be present; and either of the parties shall have his jury for the same affise; and the sheriff, or other person responsible for, may proceed to serve and prosecute the cause by bonasti corpora or disjungit, with a nisi prius, as though there had not been any former venire issued and returned, and so tenant to the issue.

Sect. 4. That threfis may be the better informed of persons to be returned for trials of fuses joined in the courts of Chancery, King's Bench, Common Pleas or Exchequer, or to serve upon jurors at assises, fecciones of eyre and terminer, general gaol-delivery and fecciones of the peace; all confidential, tushingmen and headboroughs, shall yearly, at the quarter-feelions, in the week after St. Michael, upon the first day of the fecciones, or upon the first day that the seccion 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 adions, between the age of one and twenty years and seventy years, of the jurors, which jurors, or two of them, shall and may be called and cause to be done upon the said juror, and cause the list to be entered by the clerk of the peace, according to the records of the fecciones; and no sheriff shall impanel any persons to try issues joined in the said courts, or to serve in any jury at the assises, fecciones of eyre and terminer, gaol-delivery or fecciones of the peace, that shall not be named in the list; and any confidential, tushingmen or headborough, failing to make the return aforesaid, shall forfeit 5 l. to their Majesty.

Sect. 5. Every summons of any person qualified to the service upon jury, shall be made by the sheriff, his officer or deputy, six days before the day of hearing on every person so summoned, the warrant under the seal of the office; and if in case any juror be absent from his habitation, notice of such summons shall be given, by leaving a note in writing under the hand of such officer, at the dwelling-house of such juror, with some peroes thereunto added.

Sect. 6. The said return to the justices shall be a good except for the sheriff, for such summons 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, the plaintiff or informer shall pay three cattle; and if the sheriff, his deputy or bailli, shall summons any freeholder or copyholder otherwise than as aforesaid, or neglect their duty in the services required by this act, or exce to any person to favour or reward, or allow of any writ of new summons in assises & juratte, or to writ, to execue any perfo
from the service of any jury, under the age of seventy years; such sheriffs, &c., shall forfeit 20 l. to be recovered by such party grievous, or whom else shall sue for the fame, in any of the courts at Westminster.

Sect. 7. Any sherifl shall be required to serve upon any fines at the assizes or general gaol-delivery, or the court of York, or at any sessions of the peace for any part thereof (the city of York and town of Kingston upon Hull excepted) above once in four years; and every sherifl of the said county shall keep a regifter, wherein the names of all who have served as jurors, with their addresses and places of abode, and the times and places of fuch their services shall be alphabetically entered, which regifter shall be delivered over to the succeeding sherifl within ten days after he shall be sworn into his office; and every juror who shall serve at any such aforesaid, general-delivery, or any trials in such cases, at any affizes for the county of York (except where special juries are directed by rule of court); and at no one quarter-feffions of the peace for the said county, or within any of the riding within the same, or in any place where such affizes shall be held in adjournment within the county, shall be returned also as alfo sheriffs 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 sessions of the peace for Middlesex.

Sect. 10. The 4th Will. & Mar. cap. 24, as to so much as doth relate to the returning of jurors, shall be a force, together with this act, for seven years, from the first day of May 1696, and to the end of the next session of parliament.

Sect. 11. This act, or the said aforesaid, shall not give any longer time for the summoning of jurors, to try any fines that are tried by jurors of London or Middlesex, than was required before; nor shall give any longer time at the return of any writ, precept or process of serius actis, habeas corpus or fieri ingressus; but where there shall have been any error or defect between the writing of such writ and the time of return thereof, every juror may be discharged, as he might have been before the said aforesaid 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 town corporate that have power by charter to hold elections of gaol-delivery or of the persons to be chosen for the same, but shall be of force for four years, and to the end of the next session, and continued farther for 11 years, &c., by 10 Ann. cap. 14, and continued farther for 7 years, &c., by 9 Geo. 1. cap. 8, and referred by to 3 Geo. 2. cap. 25, which act of 3 Geo. 2. cap. 25, is made perpetual by 6 Geo. 2. cap. 37.

Sect. 8. If any juror of peace of the county shall be ill, or at the sessions of the peace for the county, upon the penalty of 20 l., to be forfeited by any sheriff, or other officer making such return and summons, to be recorded, and serve at any of the sessions of the peace for the county, any of the courts of record at Westminster, by act of debt, &c.

Sect. 3 Ann. cap. 18. sect. 3. If any sheriff of the county of York shall, during the continuance of the act 7 Will. 3. cap. 34. neglect to keep such register, as in the said aforesaid 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 theretofore of any of his predeceflors, or of any one of them, within the space of years next before, and which were delivered over to him, shall forfeit to deliver such certificate gratis, as in the said act is mentioned; every such sheriff of the county of York shall forfeit 100 l. 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 aforesaid act, shall knowingly summon or return any person to serve upon any jury at the affizes or sessions of the peace, who shall within four years before such summons or return, have served upon any jury at any affizes or sessions within the county, and shall not, upon producing such certificate, discharge the summons or return, and thereof give notice to the party summoned, six days before such affizes or sessions of the peace; the said sheriff, &c., shall forfeit to the party so summoned 20 l. to be recovered as before-mentioned, with costs.

Sect. 5. The juries of peace for all counties within England and Wales, shall yearly during the continuance of the said aforesaid act, at the quarter-feffions next after the 24th of June, issue their warrants to the head-officemen of every hundred, lath or wapentake, requiring them to issue their precepts to find out such head-officemen, or tithingmen and headboroughs, requiring them to meet together and to complete the necessary lists of tenonable persons 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 person within the places for which they serve, qualified to serve on juries, according to the said act 4 Will. & Mar. cap. 24, with their additions, between the age of 21 years and 70 years, as by the said act 7 Will. 3. cap. 32. is directed; which lift the confable, &c., yearly at the quarter-feffions in the week after St. Michael, upon the first day of the sessions, or upon the first day that the sessions shall be held by adjournment at any particular place, shall return to the judges; and any head-officemen failing to issue his precept to meet with the confables, &c., shall forfeit 10 l. and any confable, &c., failing to meet the head-officemen, and failing to prepare a list, and to return the same to the judges as aforesaid, shall forfeit 5 l. and every high confable, and tithingman, or other officer making such return, shall be prosecuted as aforesaid, for the non-attendance of jurymen to offending, shall be prosecuted as aforesaid, for the non-attendance of jurymen to offending, or to serve, or to serve, or to serve, or to serve, or to 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-feffions, and leave a duplicate of such list with a churchwarden or other officer.
poor; and if any person not qualified shall find his name mentioned in such list, and the person required to make such list, shall refuse to omit him, the justices at their quarter-seconis, on satisfaction of a bond of the party filing, or of any other bond, shall order his name to be struck out.

Sect. 2. If any person, required to give in or make up any such list, shall wilfully omit any person whole name ought to be entered, or omit any who ought to be omitted, or shall file such list, or any register or in- terfery any person, he shall, for every person so omitted or inserted, forfeit 20 l. on conviction before one justice of the county, or, where the offender shall dwell, on the confession of the officer, or proof by one witness, or oath; one half to the informer, the other half to the poor of the parish, or, for which the list is returned; and if the penalty shall not be paid within five days, it shall be levied by diffents 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-secons, which shall direct the clerk of the peace to omit or strike out the name; and duplicates of the lists, when delivered at the seffions and entered by the clerk of the peace, shall, during the seffions, 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 place of abode; and if any clerk of the peace neglecting his duty, the sheriff shall forfeit 20 l. to such person who shall prosecute for the same, till the party be convicted upon an information at the quarter-secons.

Sect. 3. If any sheriff or officer shall summon and return any perons to serve on any jury before the justices of assize, nisi prius, or judges of the great fecons in Wales, or of the seffions for the counties palatine, whose name is not entered in the duplicates transmitted to him by the clerk of the peace; or in any clerk of assize, judge's affiate, or other officer, shall record the appearance of any person so summoned and returned, who did not actually appear; then any judge of assize, nisi prius, or the sheriff, or the clerk of the peace, may, for such offences, return an information against such officer, and the officer shall forfeit 20 l. for every person so summoned and returned, and for every person whose appearance shall be so falsely recorded, as the said fault shall think, meet not exceeding 10. l. or less than 40. l.

Sect. 4. No perons shall be returned as jurors at any assize, nisi prius, or pleasure, who have served within one year before in the county of Rutland, or four years in the county of York, or within two years in any other county, not being a county of a city or town; and if any sheriff shall wilfully tranfger therein, any judge of assize, or the sheriff, is required, on examination and proof of such offence, in a summary way, to set a fine upon such officer, not exceeding 5. l.

Sect. 5. Every sheriff, or the sheriff shall register the names of such persons, as shall be summoned and serve as jurors at any assizes, and shall keep a certificate thereof, in which the sheriff, is to give without fee; and the book shall be transmitted by the sheriff, or to his successor.

Sect. 6. No sheriff or other peron shall take any reward, to exclude any person from serving on juries; and no officer appointed to summon jurors, shall summon any peron other than such whole name is specified in a mandate signed by the sheriff, or. If any sheriff or officer shall wilfully tranfger in the said cafe, any judge of assize, or may, on examination and proof of such offence, in a summary way, set a fine on any person exceeding 5. l.

Sect. 7. It shall be sufficient for any conftables, thithersmen or headboroughs, after they have completed the lists for their precincts, according to 7 & 8 Will. 3. cap. 32. and 3 & 4 Ann. cap. 18. and this act, to subscribe the name in the presence of one justice for each county, or, and at the same time to attest the truth of such lists, upon oath, to the best of their knowledge or belief; and the lists shall (being signed by the justices) be delivered by the constables, or, to the high constables, who are to deliver in such lists to the quarter-secons, attending with their receipt of such lists from the constables, or, and that no alteration hath be made since their receipt thereof.

Sect. 8. Every sheriff, or, in England, shall, upon the return of every venire facias (unless in causes intended to be tried at bar, or where a special jury shall be drawn) annex a prospectus to the writ, containing the names, additions and places of abode, of a competent number of jurors named in such list, the names of the names of the persons so to be served in the panel annexed to every venire facias, for the trial of issues at the assize or assizes; which number of jurors shall not be less than two, or more than three, with the direction of the judges appointed to go the circuit, or one of them, by order under their hands; and the writs of habeas corpus or dijfigerat, subsequeat to such venire, need not have inserted in the bodies of such writ the names of the persons contained in such panel; but it shall be sufficient to insert in such writs, corpora juris, sive, habeas corpus perpannum in causa brevi brevissime nominatim, or words of like import, and to annex to such writs pan- 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 now allowed.

Every sheriff or officer, to whom the return of juries in the court of grand secons in any county of Wales shall belong, shall, at least eight days before every grand secons, summon a competent number of persons qualified out of every hundred and commute within such county, fo as such number be not less than ten, or more than fifteen, without the direction of the judge of the grand secons, by rule of court; and the officer shall return a list, containing the names of the persons so summoned the first court of the second day of every grand secons; and the persons so summoned, or a competent number of them, as the judges shall direct, and shall be sworn in every grand secons, and return a venire, habeas corpus and disjigrat, for the trial of causes in such grand secons.

Sect. 10. Every sheriff or officer, to whom the return of the venire for the trial of causes before the justices of the seffions for the counties palatine of Cheshire, Lancastor, Chester, and Shropshire, shall, four days before the seffions, summon a competent number of persons qualified, so as such number be not less than 48, nor more than 73, without the direction of the judges and shall, eight days at least before such seffions, make a lift of the persons so summoned; and such lists shall be hung up at the sheriff's office; and the names of such persons not being on such lists, and no others, shall be summoned to serve on juries at the next seffions; and the sheriff shall, on the return of such list on the first day of the seffions; and the persons so summoned, or a competent number of them, as the judges shall direct, and no other, shall be named in every panels to be annexed to every venire, habeas corpus and disjigrat, in such seffions.

Sect. 11. The name of each person summoned and impanelled, 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, or the under-sheriff, and shall, by the direction of the marshal, be rolled up in a common roll of parchment and put into a box or glass; and when a cause is brought to be tried, some indietnent 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, 'til twelve be drawn who shall appear. Sect. 9. If any person, twelve persons so summoned, their names being marked in the panel, and they being forsworn, shall be the jury to try the cause; and the names of the persons forsworn shall be kept apart in some other box, or, till the jury have given in their verdict, and the cause is recorded, or till the jury be discharged; and then the same names shall be recorded and returned to the former box, or and so return'd.
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"2d. If a cause shall be brought on to be tried before the jury in any other cause shall have been brought in verdict, or be discharged, the court may order 12 of the refuse to be drawn as before, for trial of the cause.

Sec. 13. Every person whole name shall be drawn, and who 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 absence 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.

Sec. 14. Where a view shall be allowed, six of the jurors or more (who shall be contented to 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 a jury at the fees of any keepers, and shall be first sworn, or such of them as appear on the jury, before any drawing; and so many only shall be drawn as to add the view as shall make up the number of twelve.

Sec. 15. His Majesty's courts of King's Bench, Common Pleas and Exchequer shall, upon motion made in behalf of his Majesty, or on the motion of any party or parties, or of any procurator or defendant, in any indictment or information for any misdemeanor, or information in the nature of a quo warranto in the King's Bench, or in an information in the Exchequer, or in any 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, of the trial of any such cause, in such manner as special juries are usually sworn in such courts upon trials at bar.

Sec. 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.

Sec. 17. Where a special jury shall be ordered by rule of court in any cause arising in a county of a city or town, the theft 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 firekeepers' book hath been usually ordered to be brought in order to the striking of jurors for trials at bar, and the jury shall be struck out of such books.

Sec. 18. Any person having land in his own right of the yearly value of 20l. over and above the refereed 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 to the jury, as a fuch person, and such a person may be summoned to serve on juries as freeholders may.

Sec. 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 act there as a juror in any of the several juries to whom is intrusted the peace of the city to be held for the city, who shall not be a housekeeper of 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.

Sec. 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 so challenged may be examined on oath of the truth of the matter.

Sec. 21. This act shall be read once in every year at the quarter-seations to be held for every county or place within England and Wales next after the 24th of June.

Sec. 22. This act shall continue till the first of Sep- tember, 1724. [Amended by 6 Geo. 2. cap. 37. Stat. 4 Geo. 2. cap. 7. sect. 1. The clause of 3 Geo. 2. cap. 25. sect. 4. shall not extend to the county of Mid- dlesex.]

Sec. 2. No person shall be returned to serve as a juror in King's Bench who has been returned at the next Viz. H. N. 98.

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prius in the said county in the two terms or vacations next preceding, under such penalty upon the sheriff, &c. as might have been inflicted for any offence against the said clause.

Sec. 3. All leafholders upon leases where the improved rents shall amount to 50l. or over, and above ground; or for other improvements, shall be liable to serve upon juries.

Stat. 6 Geo. 2. cap. 37. sect. 2. The juries of the feizations or alleys for the counties palatine of Chester, Lancaster and Durham, upon motion on behalf of his Majesty, or of any procurator or defendant in any indictment or information, or of the parties, or of any plaintiff or defendant, in case they think fit, order a jury to be sworn before the proper officer of each court, in such manner as special juries have been usually sworn in the courts at Westminster upon trials at bar.

Stat. 24 Geo. 2. cap. 18. sect. 4. Any party which by virtue of 3 Geo. 2. cap. 25. or 6 Geo. 2. cap. 37. apply for a special jury, shall not only pay the fees for striking such jury, but shall also pay all the experiences 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 entitled to receive before the same cause might be 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 same was a cause proper to be tried by a special jury.

Stat. 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 so making default, having been duly summoned) shall forfeit for every such default, such fine not exceeding 40s. nor less than 20s. as the judge of the respective court, or such default is made shall impose, unless some just cause for such defaultor's absence be made appear by oath or affidavit to the satisfaction of the judge.

Stat. 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 distress 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 distress and sale, shall be rendered to the person whose goods were so disdained and sold.

Stat. 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 held; to be applied to future, no charges to be levied, nor any fines fet in courts within such city, &c. are by charter, prescription, or usage applicable.

Stat. 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 defendant shall defend the general issue; and if a verdict be found for the defendant, &c. the defendant shall recover double costs.
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6 Co. 53.
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2 Rol. Jbr. 646.
9 Co. 49.
1 Jones 153.

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The faid a£l 3 Hen. 8. c. 12. extends not only to panel
of grand inquefts returned, but to all panels of the pett]
jury, commonly called the petty jury of life and death
which may be reformed by the

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The grand jury, as has been already observed, must consist of twelve at least, the petty jury of twelve; and a number more may be used; but it is thought that particular juries may consist of more or less numbers than twelve. 

Trials per Pais 80.  F. N. B. 107. Finch of Law 400, 484. A writ of inquiry of writte by thirteen was held good. Cro. Car. 414.

But on a writ of error a judgment out of an inferior court was reversed, because being defectuous, the inquiry of damages was only by two or more; and though a custom was alleged to warrant it, yet it was resolved, that there could not be less than twelve, though the writ of inquiry faith only per facramentum probatum & legationum nominatim, and not deaunm as in a venire. Vent. 2. 113.

Also it hath been frequently held, that a custom in a county is as valid as any others, whether the said custom is used in Wales, yet that is by force of the statute 3 Hen. 8, which appoints that such trials may be by six only where the custom hath been so. Cro. Car. 259. 1 Sid. 253. 1 Kit. 326.

The first procet for conveying the jury is the venire facias, and thereupon in the Common Pleas there issue the babas corpora and dirigentes juratates; but in the King's Bench and Exchequer after the venire, they proceed on the dirigentes; for the venire being in the nature of a summons, if the jury did not appear thereon in those courts in which the King's Bench and Exchequer are held in the roving procet, viz. the dirigentes. Trials per Pais 64.

If the jury did not attend on the babas corpora or dirigentes, which was to bring them into court, there was an indecit, decent, or alta 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 even, because it was supposed that the first babas corpora and dirigentes had given notice to the vicinage that they ought to appear; and therefore the supplement to the jury were enforced in a particular summons to them. But if the whole jury be challenged off, then new petiters factors, and if none of the jury appear, then a dirigentes juratates shall issue, and no tale. 2 Hal. Hist. P. C. 265.

Juries being duly served with procet are compellable to appear; and wherefore more than one appear, but not enough to take the inequal, but some of the others come within view, or into the town where the part is held, but refuse to come into court; in those cases the court may order those who appear to inquire of the yearly value of such defaulters lands; which being done, the court may either summon them to appear, on an issue of the sum found, or some lesser form, or may fine them in like sum without more ado; but such jurors shall only lose his fines, and not the yearly value of his lands, unless the party pray it; but one who makes default after appearance is liable to forfeitour without my prayer; yet the court in discretion will sometimes only impose a small fine; also a juror who comes not to town where the court is held, shall only lose his fines, or be amerced, but not fined; and it is said, that a juror is not amercable at all at the return of the first venire, except before justices of oyer and terminer. 2 Hal. P. C. 146, and severall authorities there cited. 

Trials per Pais 200.

See the flut. 27 Eliz. c. 6. sect. 2, and 3 Geo. 2. c. 25. sect. 13. in the first division of this title.

And the sheriff is bound to return the panel so returned. 2 Hal. Hist. P. C. 265, 266. It hath been holden, that this flutute doth not take away the force of 11 H. 4, as to any point wherein both may conffit together; and therefore if any indicter be outlawed, or returned at the nomination of any person, contrary to 11 H. 4, 4, the jury is not a sufficient to reform the panel, the indictment may be avoided in the same manner as before. 3 Jefl. 32. 2 Haw. P. C. 219.

When procet is once awarded to the coroner, &c. for the sheriff's actual partiality, the entry is meets & new intromitters, and in such case procet shall not afterwards be awarded to any new sheriff, but where it was awarded to the coroner for that the sheriff is tenant, &c. it may be awarded to a new sheriff. 2 Hal. Lit. 158. a. Rolls, Ch. 61.

As to a venire facias is awarded to the coroner for partiality in the sheriff, and afterwards a tale is awarded, which is returned by the sheriff, this has been held error. Crs. Eliz. 574. Morgan v. Hyg; and see Crs. Eliz. 586.

See the statute 3 Geo. 2. c. 25. sect. 1—9, in the first division of this title.

Procet awarded to jurors may be returnable immediately into the King's Bench for the trial of an indictment found in the county where it is set, whether for a crime in such county, or for a treason beyond sea; but for the trial of an indictment removed by a tertinari from a different county, there must be fifteen days between the issue and return of either party: 8o. Stat. 3, 4 & 5 Ch. 518. 2 Jefl. 568. 2 Haw. P. C. 426.

Justices 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 justices 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 comit, or the crime amount to felony. 2 Hawk. P. C. 456. and several authorities there cited.

A venire before justices of oyer and terminer, returnable not at a day certain, but at a certain time, is no more than to adjourn the said case; but upon the venire returnable the same day on which the party is arraigned; it is said, that there are strong authorities to the contrary, unless the prisoner comit, or the crime amount to felony. 2 Hawk. P. C. 456.

See the flut. 7 & 8 Will. 3. c. 32, in the first division of this title.

Also 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 expedition of justice; for if 12 should only be returned, no man should have a full jury appear or to be favored in respect of challenges without tales, which would be a great delay of trials. 2 Crs. Lit. 155. a.

But the sheriff return a letter number, as wherein the sheriff return only 23, and a sufficient number appear, and try the issue, this will be aided by the &tute of juxtafolios as a miterturn. 5 Cr. 36. Crs. Eliz. 557. Cro. Car. 223.

The precept that issue before a seftoan of gaol-delivery, of oyer and terminer, and of the peace, is to return 24, and commonly the sheriff returns upon that precept 48. 2 Hal. Hist. P. C. 263. But the aver precept to try the prisoner after he hath pleaded, is only venire facias 12, and 24 are returnet by the sheriff on that panel. 2 Hal. Hist. P. C. 263.
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At Common law in civil causes, it is form: the sheriff might have returned above 25 if he pleased: and therefore by the statute of Nfon. 2. c. 28, it is recited, that whereas the sheriffs were to summon an unreasonnable multitude of jurors, to the grievance of the people, it is ordained, that thenceforth in one afize no more shall be return'd than 24. God. 370. 1. Rob. in the 310. 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 return'd by the secondary, as the jury, to try the cause. 2. Lil. Regit. 123. That the court may order a jury of merchants if they think convenient. 2. Lil. Regit. 122.

If the rule was entered into by consent, it is said to be a contempt in the attorney not to be prefered; but to remedy any inconvenience from hence, a rule was made, that when a matter is to strike a jury, the forty-eight out of the freeholders book, he shall give notice to the attorneys of both sides to be prefered; and if the one comes, and the other does not, he that appears shall, according to the ancient courts, strike out twelve, and the master shall strike out twelve for him that is absent. 2. Lil. Regit. 127. 1. Salk. 405.

And it is said, that if by rule of court the master is ordered to strike a jury, in case it be not express'd 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. Salk. 405. 4th ed. 1. 2. Salk. 405.

It is said, that a special jury may be granted to try a cause at bar without the content of the parties, but never at nisi prius, unless for good cause flown. 1. Med. 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 by done in the common civil courts upon trials at bar. 2 Jas. 222.

See the statute 3 Geo. 2. c. 25. 1st. 15. and 24 & 29 Geo. 2. in the 310. 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 whole matter, the sheriff struck 24 before the court, and at the trial challenged the array for want of hundredors, 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. Med. Ca. Law and Equity 245. The King v. Bourdage.

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 case next above relied on, it was denied; and said per curiam, That the attachment in the case Fabia 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 proceedings 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. Tuchbain. Med. 8 Geo. 2. in B. R.

6. For what misdemeanors jurors are punishable.

In what cases jurors are punishable by attaint, fee Attaint. And as to the cases where they are otherwise punishable, we must consider jurors either in a ministerial capacity, as persons bound to attend the court, to do the business for which they are return'd till they are discharge'd; or in a judicial capacity, the judges being pleased 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 person as he may rest on a grand per peremptory venire. 8. Ca. 38. 8. 41. 2. Rob. 224. 2. Hal. Hilj. P. C. 309.

So if after they are sworn they refuse to give any verdict at all. 8. Nof. 49. 3 Hilj. 173. Vaghs. 152.

So if they endeavour to impaire upon the court as what they think is a special cause, or make a verdict delivered by their whole number, where in truth none of them have agreed to it, or where they agree upon two verdicts; and first, to offer one of them to the court, and to stand to it, if the court shall express no dissatisfaction to it; but if the court shall dislike it, then to give the other. 2. Hal. Hilj. P. C. 309. 2. Hal. Hilj. P. C. 310. 1. Henk. P. C. 140. 2. Hal. Hilj. 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 capable with them in their pockets, or eat or drink after the last verdict is given, and it is made from the court, before they have given their verdict, the three are agreed on it, and were also all the time in the custody of the bailiff appointed to take care of them. 123. 8. Hilj. 41. 218. 8. Hilj. 41. 218. 8. Ca. 21. Vaghs. 218. 2. Henk. P. C. 140.

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 verdict according to the direction of the court; but for the misdemeanor they were fined each forty shillings and a half, and there were no proceedings against the juryman who had been the most in fault. They were not proceeded against, as by such 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 one of the most necessary things in setting at liberty the actions of the law ought not to be suffered. 2. Pedb. 27. 2. Ca. 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 crofs or pile, &c. and to give this verdict as the chance happens; this has been held such a misbehaviour as to subject them to a fine of forty shillings and a half, and for which they are punishable, and for which a new trial will be granted upon the common rule of juratian male je giffant. 2. Leev. 140. 205. 2. Jon. 83. 3. Keb. 805.

Juryors are punishable for finding for or receiving informations from any of the parties concerning the matter in question. 2. Henk. P. C. 147.

So if a juryman have a piece of evidence in his pocket, and after the jury sworn and gone together he threw it to them, this is a misdemeanor fineable in the jury; but it avoids not the verdict, tho' the case appear upon examination. 8. Ca. 80. 3. Hilj. P. C. 306. or. As to the punishment of jurors in their judicial capacity, 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 juries of peace, and terms, been hereby, been freed and imprisoned, and bound over to their good behaviour, but these methods were thought to be contrary to the opinions in the old books, and contrary to the general reason of the law and being fully confuted in Bachelor's cafe, it was then settled, and hath been ever since agreed to, that jurors are no way punishable, except by attaint, for giving verdict.
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 verdict contrary to a judge's directions, and against what any seem to others clear and manifest evidence, for that they are the persons who may be reasonably influenced by matters known only to themselves, as their own personal knowledge of the facts, or of the credit of the witness, or of the parties. 2 Hawk. P. C. 157. S. and several authorities there cited. 3 Co. R. 142. 2 Jef. 167.

And hear Sir Henry Lord Hale seems to agree, and shews the unreasonableness of punishing a jury for going contrary to the direction of the court in matters of law, because it is impossible any matter of law could come in question till the matter of fact were settled and stated in the agreed by the jury, and of such matter of fact they were the only competent judges. Also, says he, it were the most unhappy cafe that could be to the judge, if he, in his peril, must take upon him the guilt or innocence of the prisoner; and if the judge's opinion must rule the matter of fact, the trial by a jury would be useless. 2 Hal. Hiff. P. C. 160, 161, 241, 45.

But he seems to admit, that the usual length of fixing utterers in the King's Bench in criminal causes, may give sufficiently a jurisdiction to fine in those cases; yet that it can by no means be extended to other courts of seions, of pole-delivery, end termen, of the peace, or other inferior jurisdictions. 2 Hal. Hiff. P. C. 313.

And in this, it is true, that it is possible it may appear in any case, that jurors are perfectly satisfies of the truth of a fact, whereon they declare to the court, that they find it in such a particular manner; and the court directly tell them, that upon the fact so found, as they have agreed it to be, the judgment of the law is such or such, and they obliquely inflit upon a verdict, to appear to such jurors, and are prejudicial to the general reason of the law, that the jurors are finable by the court in such case, unless an attaindant lies against them; for otherwise they would not be punishable for so palpable a partiality in taking upon them to judge of matters of law, which they have nothing to do with, and are prejudicial to the cause, and to the exercise of direction of one, who by the law is appointed to direct them in such matters, and is to be prejudicial of ability to do it. 2 Hake. P. C. 418. for which is cited 2 Jef. 15. 16. 3 P. P. 145. 3 P. M. 363, and v. Ed. 479.

Also if a judge, for the better direction and information of a jury, shall ask them their opinions concerning such a particular fact, and they shall refuse to answer him, and obliquely insist in delivering their verdict, as they think fit, contrary to his direction, it seems questionable, whether they may not be fined in such case, unless in an attainder against them, for that it is the duty of jurors to apply to the advice and information of the court, in order to be governed by it, as far as shall be consistent with their confidences. 2 Hake. P. C. 149.

For more learning on this subject, see 3 Bac. Abr. tit. 30. 32. 43. 20.

Juries, and 21 Blis. Abr. tit. 19. 32. 45. 33.

As atterfation, is the right of farrvantage between juftrices. Lit. l. 280. Co. Litt. 180. See Jure trium tenentes.

Jus Anglocum. The laws and customs of the Anglo-Saxons, in the time of the heptarchy, by which the people were for a long time governed, and which were preferred to all others, were termed customary laws; and are preferred to be the rights of the Crown is part of the law of England; and differs in many things from the general law, relating to the subject, see Co. on Litt. fol. 15. 8.

Jus Caritatis Anglica. See Curteys of Cuine.

Jus succipitum, Is where a man hath the possession as well as a propriety of any thing. Britil. lib. 4. tract. 4. c. 4.

Jus gentium, Is the law by which society in general and nations are governed. Stoten.

Jus harque, The right of inheritance. See Petit.

Jus communis, Is the right of presenting a clerk to a benefice. Cawd. edit. 1727.

Jus patronatus, Is not within the statute of limitations. 1 M. jfl. 2. c. 5. See Jure preempt.


Jutif, (Fr. jufif, i. e. desoriis. In this sense, a jurifon, and are persons of honour, with peers on horseback, by way of exercise, and finely. Ann. 24 Hen. 8. cap. 15. Edicuim Regis Edvardi 1. probando fab satisfactura annum qua satisfytura potest, quad non remaneant, decidet, adventuris bynum, insulas ad armam meruit, atque licentia Regis. Pat. 29 Edw. 1. Exef. 101. See Tourment. And it differed from tournament as species doto from genus; because tournaments were all sorts of military contentions, and conflicted of many men in troops: but jousts were usually between two men, and no more. Conier. 1737.

Jutice. The virtue by which we give to everyone what is his due. Jefc. Locke. Jutice and right shall not be fold, denied or delayed. M. C. 9 II. 3. c. 29. Right shall be done in all cases without refpect, St. Hefif. 1. 3 Ed. 1. c. 1. Shall not be delayed for any command under the Great seal. 2 Ed. 3. c. 8. 14 Ed. 3. fl. 1. c. 14. 7 Rofo. 2. c. 10.

Jutifycles. (Iuutificiarius,) Signifies him that is deputed by the King to do right by way of judgment; the reason why he is called Jutifer and not Judge is, because in ancient times the Latin word for him was Jutifius, and not Jutificiarius. John Grierso and Roger Heedon, 2 T. Sug. fuar. Annul. fol. 413. Another reason why they are called Jutificiarius, and not Jutifices, is because they have their authority by preption, delegates to the King, and not joint magistrate, and therefore cannot depothe others in their stead, the Jutiefes of the forst only excepted, who hath by a particular illness given by 2 Ed. 3. c. 25, for the Chancellor, Marshal, Admiral, and such like, are not called Jutificiarius, but Judices: Of these Jutices there are divers forts in England, of the manner of whole creation with other appurtenances, read Parfitus, p. 51. There in Magna Charta, c. 12. and other statutes, as Chief Jutice, or Chief Jutficier of the King's Bench, (Capitelis Jutifitia, vel Jutificiaris de Banco Regii, vel ad platico coram Rege tenenda,) Is a lord by his office while he enjoys it, and the chief of the reft; his office espe- cially 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, mayhems, and such like; which you may read in Bracton, lib. 3. tract. 2. per tutum; and in Steword, Pl. Cor. from the sift of the 515 chapter of the first book. He also, with his assistants, heareth all personal aff now, and receive, if they think fit, all acts of injustice to his juridiction. See Camp. Jus. fol. 67. Of this court, Bracton, lib. 3. cap. 7. num. 2. faith thus, Platico vitro civilia in ren & perfanam in curia Domini Regis terminanda coram diversi Jutificiarius terminare; & illorum curiarian habet unus propriam, fictum Anglicum, & Juf- ticierarum capitales qui propius conatus Regis terminari & culterium omnium per agrum vel privilegium suo libere tenere extendere, ut si fit aliquis qui implicantur non debent, nifi coram Regi. Of the ancient dignity of the Chief Jutice, thus, Libr. Nigr. Pictatis, cap. 4. In facultas refultit, imi & pr gfpgi prinos in regno Capitales, seu Juticia. In the time of King John, and other Chief Jufides of the College, Super nos non magis refpcndere, nifi coram nihili vel Capitol Juticaria notitia. The oath of the Jutices, see in lat. 18 Ed. 3. flat. 4. and in Original Juridicilia, a catalogue of all the Lords Chief Jufides of England.

The Ch. Jutice was formerly that power alone, which after wards was distributred to three other magistrates, i. e. he had the power of the Chief Jutice of the Common Pleas, of the Chief Baron of the Exchequer, and of the Master of the Court of warts. He usuall sat in the King's palace, and they executed that office which was formerly performed by the Common Balcio; but he is the only person that place all decisions which happened between the barons and other great men of the kingdom, and likewise caufes 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 nobi-
Thus Bradfan, ib. 3. c. 7. tells us, that *jufticiarius* alli *forte* perpetuo certe habitationis facto in Banco loquelas omnes, &c. terminantes, &c.

*Jufticiarius de foris,* also Lord by his office, and bears and determines all off- fices within the foris, committed against vert or veni- son: Of these there are two, whereas one hath judici- fice over all foros on this side Treve, the other of all beyond it. The chief point of their jurisdiction confineth upon the articles of the King's charter, called *Charter de foris,* made *anno* 9 Hen. 3. concerning which see *Com. Brit.* p. 214. See *Petr. Thomes.*

The court where these justices are to  be held, once every three years, as you may read in *Manwood's Foris Law,* c. 24. He is also called *jufticiarius de foris,* and is the only justice that may appoint a deputy, by the statute of 33 Hen. 8. c. 35.

*Statute of the Hundred,* (Slept in hundred Dominus, qui sit centurio & tenendor, hundreded aliorum appellatus eft.) Sunt ambo, hundredi fribigi, cognitivae de confi majusfili, qui in eadem finiri non permitter, Spelm.

*Jurimenta, from jufticiarius,* All things belonging to jufticiarius, &c. On *Wifdom.* 1. fol. 235. Also the effects or execution of jufticiarius or jurifdection.

*Jurisdictions of affifs,* (Slept in hundred Dominus, qui sit centurio & tenendor, hundreded aliorum appellatus eft.) Sunt ambo, hundredi fribigi, cognitivae de confi majusfili, qui in eadem finiri non permitter, Spelm.

As such as were went by special command to be sent (as occasion was offered) into this or that county, to take affifs for the sake of the subjests; for whereas these actions pas always by jury, so many men would not, without great damage and charge, be brought up to London, and therefore justiciaries for this especial purpose, by com- mission particularly authorized, were sent down to them.

For it seems, that the justiciaries of the Common Pleas had no power to take affifs till the flat of 8 R. 2. cap. 2, for that by they were enabled to it, and to deliver gaol. And the justiciaries of the King's Bench have by that statute such power affirmed unto them as at one hundred years before. These commissions Ad caperit ad caperit, of late years have been settled and executed only in Lanc, and the long vacation, when the justiciaries, and the other learned lawyers, may be at leisure to attend those controversies, &c.
The chancellor and justices of the King's Bench shall show the King, Art. from Cart. 28 Ed. 1. st. 3. c. 5.

The judgments, 18 Ed. 3. st. 4.

Of the immunity of judges from prosecutions, 31 Ed. 2. st. 7.

The duty of the judges, 20 Ed. 3. c. 1 & 2. 8 R. 2. c. 1.

The Chief Justice of the King's Bench not to be justic of affize, except in the county of Lancaster, 13 H. 3. c. 5.

For payment of the judges salaries, 10 H. 6. st. 2.

The court of King's Bench may remit prisoners to be tried in another county, 8 H. 8. c. 6.

Justices in eye (justiciar is iterum.) Are forsooth of the old French word error, as (a grand error, 1. magnus iterumus,) properly spoken. These in ancient time, were sent with commision into divers counties to hear such causes especially, as were termed plea of the crown. And this was done for the care of the people, who must else have been hurried to the King's banch, if the cause were too high for the county-court: They differed from the justices of eye and terminer, because they (as we said before) were sent upon one or two special causes, and to one place; whereas the justices in eye were sent through all the counties and provinces of the land, with more indefinite and general commision, as appeareth by Bracton, lib. 3. c. 11, 12, 13. and Britton, cap. 2.

And again, because the justices of eye and minister were sent uncertainly upon any usurp, or other occasion in the county; but these in eye (as Mr. Gau was sent through all England) were sent but few years once; with which agrees Hone in his Mirror of Justices, l. 2. 2. Quousque et ferre attur, &c. t. 1. cap. Des pecus criminales, &c. de sui fidei Regi, &c. and lib. 3. cap. De justices in eye: Where he also declares what belongs to their office. But there is a book written by Sir Robert Gwinn, entitled, The Largess and remuneration of the justices, was of the King Henry the Second, as Land, in his Brit. winomist, pag. 104. and Hudson, de part. &c. anno. fol. 113. hath of these thinge, justiciar is iterumus, conferent, per Henricum secentum, ut de mora Regnum in re porta. et per quorum funderationis justice iterumus confitemur. Et in same respect they resembled our justices of afifie at present, the authority and manner of proceeding much differ.

See, &c. lett. fol. 263. Contow. Justices in eye shall not amerce towns and cities if enough was 52 H. 6. c. 24.

The oaths of the officers and jurors in the eye, inter falsa incerti temp.—Justices in eye to inquire of undue delivery of felonies, inter stat. incert. temp.

Justices in eye can be made by none but the King, 27 H. 8. c. 24. sect. 2.

Matters appertaining in the eye, inter stat. incert. temp. etc., and justices in eye, the justiciar in eye, sect. 2.

The opposeth a commision to any justiciar in eye, sect. 3.

The commision of a justiciar in eye, sect. 3.

The governors of the justiciar in eye, sect. 3.

The oaths of the officers and jurors in the eye, sect. 9.

The commision of a justiciar in eye, sect. 10.

The commision of a justiciar in eye, sect. 11.

The justiciar in eye, sect. 12.

The oaths of the officers and jurors in the eye, sect. 14.

The governors of the justiciar in eye, sect. 15.

Two men of the law in each county shall be in the commision of gaol-delivery, 17 R. 2. c. 10.

None but the King can make them, 27 H. 8. c. 24. sect. 2.

They shall be attended by bailiffs, &c. 27 H. 8. c. 24. sect. 7.

May give judgment on prisoners convicted before other justices, 1 Ed. 6. c. 7. sect. 5.

The granting a new commision of gaol-delivery, or of the peace, in a town corporate, shall not avoid the former commision, 2 Ed. 2. Pb. & Mar. c. 18.

Justices of gaol-delivery may act in their counties, 12 Gen. 2. c. 1.

Justices of the Peace, (justiciar ad suddionum judicatium assignati,) King Richard I. after his return out of the Holy Land, anno 1194. appointed particular justices, laws, and orders, for preventing the frauds, and regulating the contracts and affairs of the Peace. See 27 Ed. 1. m. c. 20.

Justices of labourers, were Justices heretofore appointed to redress the wrongs of labouring men, that would either be idle, or have unreasonable wages. See 21 Ed. 3. c. 1. 25 Ed. 3. c. 8. and 31 Ed. 1. c. 6.

Justices of sales, are all one at this time with justices of assize; if one is a special commission for a cause in the Common Pleas, to put it off to such a day, nisi prius justiciar iuraverit ad eas partes ad capiendas afferas, and upon this cause of adjournment they are called justices of nisi prius, as well as justices of assize, by reason of the writ or action that they have to deal in, nisi prius. Their commission may be seen in 1 Temp. I, fol. 204, yet with this difference between them, that justices of assize have power to give judgment in a cause, but Justices of nisi prius only to take the verdict. But in the nature of both their functions, this seems to be the greatest difference, that justices of nisi prius have to deal in causes of assize as well as real; whereas justices of assize, in their acceptation, middle only with the pettyfrofes writt called Assize. See 1 Temp. I. fol. 204.

Justices of eye and terminer, (justiciar ad au- diendum & terminandum,) were Justices deputed upon some special or extraordinary occasions. See 1 Temp. I. fol. 204.

Perforvae in his Nat. Br. faith, That the commision of eye and terminer is directed to certain persons upon any great riot, insurrections, heinous misdemeanors, or tref- pases committed. And because the occasion of granting this commision should be maturely weighed, it is provided by the statute made 2 Ed. 3. c. 2. That no such commision ought to be granted, but that they shall be dispatched before the justices of the one bench or other, or justices errons, except for horrible trespasses, and that by the special favour of the King. The form of this commision, see F. N. B. f. 110.

Commissions of eye and terminer shall be granted only to the justices of either Bench and in eye, except for heinous trespasses, &c. 2 Ed. 2. c. 1.

Shall go circuits to hear and determine trespasses, St. Raym. interi. temp.

Oyers and terminers shall not be granted but for horrible trespasses, 2 Ed. 3. c. 2. 34 Ed. 3. c. 1.

Oyers of eye and terminer may direct writs to a foreign county to take felonies, 5 Ed. 2. sect. 1.

May try treason, misprisions of treason and murder in any county, after the council have examined into it, 33 H. 8. c. 23.

Justices of the pavilion, (justiciar pavilions,) are certain judges of a pie-powder court, of a most transcendent jurisdiction, held under the bishop of Winchester at a fair on St. Giles's Hill, near that city, by virtue of letters patent granted by Richard 2. and Edward 4. Episcopi Winton. & successores suos, a tempore quo, &c. Justiciarii ait, qui vocantur Justiciarii pavilions, cognitumes placitorum & alliatorum negotiorum commodo duratione, necnon claves particularis, &c. See 11 Ed. 3. sect. 3.

Winton, pro certa tempore feria illius, & nonnullas alias libertates, immunitates & confessiones habuissent. &c. See the patent at large in Pyne's Animad. on 4 left. fol. 191.
J U S

JURISPRUDENCE

Jurisprudence of the peace. (Jurisprud. ad poenam.) Are those who are appointed by the King's commission to attend the peace of the county where they dwell; of whom some, for special replies, are made of the coroners, because business of importance may not be dispatched without the presence or absent of them, or one of them.

They were called Guardians of the peace until the thirteenth year of Edward the third, cap. 12, where they are called Justices. Lamb, Ethir., lib. 4, cap. 19. pg. 578.

Cowell.

1. Of the ancient offices called Confratators of the peace.
2. Of the first institution of justices of the peace, and the general statutes which give them jurisdiction.
3. Who are qualified for the office.
4. Of the manner of appointing them; and of their commission.
5. Of their jurisdiction relating to treason, felony, inferior officers, and immunities not taken before them.
6. Of the jurisdiction of one, two or more justices; and how for a justice of a county, or 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 offices.

1. Of the ancient offices called Confratators 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 Confratators of the peace, which were of two sorts. 1. Those who in respect of their offices had power to keep the peace, but were not simply called by the name of Confratators 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 Confratators or Wardens of the peace. Lamb. book 1. cap. 3. 2 Hol. Hist. P. C. 44. 2 Hawk. 32.

As to the 18th. 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 commission; also the Lord Chancellor, or Lord Keeper of the Great seal, the Lord High Steward of England, the Lord Martial, 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 more power in the respect, than a mere private person. Dalb. cap. 1. Cramp. 6.


Afo all courts of record, as such, have power to keep the peace within their own precincts; and the Justices of goal-delivery may take furety of the peace from a person committed, for not finding such furety. 10 Hen. 6. 7. 8. Lamb. book 1. cap. 3.

Afo every Frier is a principal Confratator of the peace within his county, and may en office a warrant, and take furety for it; and, as some say, the Frier fo 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 commisition. 12 Ed. 7. 17. 8. Bras. Peace 13. Cres. Car. 26. F. N. B. 81.

Alo a coroner is another principal Confratator of the peace within his county, and may en office a warrant, and take furety for it; and, as some say, the furety 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 commisition. 12 Ed. 7. 17. 8. Bras. Peace 13. Cres. Car. 26. F. N. B. 81.

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Alo every high and petty constable are the Common law Confratators of the peace within their several

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And by the 4 Ed. 3, cap. 2, it is further enacted, "That there shall be enquired good and lawful men in every county to keep the peace, and at the time hereinafter mentioned, such as shall be indicted or taken by the said keepers of the peace, shall not be let to mainprize by the sheriff, nor by none other ministrers, if they be not mainprizeable by the law; and he justice assize do deliver to the said keepers of the peace, that shall find their indents before the justices, &c.

And it is further enacted by 18 Ed. 3, cap. 2, "That no or three of the better reputation in the counties shall be enquired keepers of the peace by the King's commission, and at what time shall be, the fame, with other wise and learned in the law, that shall be appointed by the King's commission to hear and determine felonies and trespasses done against the peace in the counties, and to inflict punishment reasonably according to the law and reason 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 enquired for the keeping of the peace, one lord, and with him three or four of the most worthy in the county, with some learned in the law; and they shall have power to retain the offenders, rioters and all other harassers, and to pursue, arrest, take, and chastise them according to their trespasses and to their benefit, and as the law and custom of the realm, and according to that to which they shall seem best to be, by their discretion and good advice; and also to inform them, and to inquire of all those that have been illibers and robbers in the parts beyond the sea, and by such persons, and go wandering, and will not labor as they were wont in times past; and to take and arrest all those that they may find by indictment or by suspicion, and to put them in prison, and to take all them, that be not of good fame, where they shall be bound, sufficient surety and mainprize of their good behavior towards the King and his people, and according to their discharge or to their punishment, to the intent that the people be not by such rioters or rebels troubled or endangered, nor the peace broken, nor merchants or other passing by the highway of the realm disturbed nor put in the peril, which may happen of such offenders; and also to hear and determine at the King's suit all manner of felonies and trespasses done in the county, according to the laws and customs aforesaid.

And it is enacted by 17 Rich. 2, cap. 10, "That in very commission of the peace tido the realm, where need shall be, two men of two men of the law of the county where such commission shall be made, shall be enquired to be the constables of the place, and they shall be one or more, and shall be the justices of the peace, and to enquire and to determine the cases of the peace, and to take matters of the peace.

And it is further enacted by 2 Hen. 5, jart 1, cap. 4, "That the justices of peace in every shire named of the nation, (except Lords, and the Justices of other 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) shall be enquired in the same shire, and shall make their sessions four times by the year, viz. in the first week after Michaelmas, Epiphany, Easter, and the translation of St. Thomas the Martyr, and other if need be, and that the same justices hold their sessions together, and to cause the same weeks every year.

There seem to be the most general statutes relating to the authority of justices of peace, besides which there are a very great number of subsequent statutes which give them particular powers, sometimes to one justice, sometimes to two, sometimes to their fellows, sometimes to the King himself, and it is by no otherwise to take notice than by obtaining, that where by statute a special authority is given to justices of peace, it must be exactly pursued. Sect. 475.

3. Who are qualified for the office.

By the statute 2 Hen. 5, jart 2, cap. 1, it is enacted, "That the justices of peace shall be made in the counti.

Vol. II. N. 99.
A. B. do suffer, that I truly and bona fide have such an estate, in law or equity, to and for my own use and benefit, consisting of (specifying the nature of such estate) as doth qualify me to act as a justice of the peace for the county, riding, or division, of according to the true intent and meaning of an act of parliament, made in the third 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 fifth 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 consists of an office, benefit, or ecclesiastical preferment, which it shall be sufficient to afterwards by the true names) is lying or being, or being given or assigned to lands, tenements or hereditaments, being within the parish, township, or pretense of, or in the several parishes, townships or pretense of, in the county of, or in the several counties of

Which oath is taken and subscribed shall be kept by the clerk of the peace among the records of the sessions.

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 2s. which being proved to be a true copy of such oath, shall be admitted to be given in evidence upon any issue, in any action or information brought upon this act.

3. Any person who shall act as a justice of the peace for any county, or in England or Wales, without having taken and subscribed the said oath, or without being qualified according to the meaning of this act, the defendant may, by way of defence, and excepting 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 sue for the same, be recovered, with costs, by action of debt, or in any court of record at Westminster, in which no ejectment, shall be allowed; and in every such action or information, the proof of his qualification shall be a sufficient plea in such person against whom the same is brought.

4. If the defendant in any such action or information intend to infin upon any lands, or in such action or information, substance to act as a justice of peace at the time of the supposed offence, he shall at or before the time of his pleading, deliver to the plaintiff or his attorney, a notice in writing specifying such lands, &c. (other than those contained in the act), and the principal house or place, and the county to which the same are (offices and benefits excepted, which shall be sufficient to ascertain by their usual names); and if the plaintiff or any person shall thereupon not proceed any further, he may, with the leave of the court, discontinue such action or information upon payment of such costs as shall be recovered.

5. Upon the trial of the issue in any such action or information brought as aforesaid, no lands, or not contained in such oath and notice, or one of them, shall be allowed to be infin upon by the defendant, in part of his qualification.

6. In case the plaintiff or any person in such action or information discontinues the same, the lands, or any part thereof, shall be allowed to the plaintiff or the defendant, as the court shall think just.

7. Where the qualification or any part thereof consists of rent, it shall be sufficient to specify in such oath or notice so much of the lands, &c. out of which such rent is infin, as shall be sufficient value to answer such rent.

8. In case the plaintiff or any person in such action or information discontinues the same, the lands, or any part thereof, shall be allowed to the plaintiff or the defendant, as the court shall think just.

9. Only one penalty of 100l. shall be recovered from the same person by virtue of this act, or of any act, for any other offence committed by the same person, before the time of bringing the action or information upon which one penalty of 100l. is recovered, and due notice given to the defendant of the commencement of such action or information.

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 person, for any offence committed before the time of giving such notice; but the court where such subsequent action or information is brought, may upon the defendant's motion stay proceedings therein, so as such first action or information be prosecuted without fraud, and with effect; but no action or information not so commenced shall be deemed an action or information within this act.

11. Every action, bill, plaint or information, given by this or the said 5 Geo. 2. cap. 18, shall be commenced within six calendar months after the date upon which the same is grounded has been committed.

12. This act shall not extend to any city or town being a county of itself, or to any other city or town, having the title of the several parishes, having the title of the several counties.

13. Nothing in this act, or in 5 Geo. 2. cap. 18, shall extend to any peers, or lords of parliament, or to the lords or other of his Majesty's privy council, or to the justices of either bench, or to the barons of the exchequer, or to his Majesty's attorney or solicitor general, or to the judges of the several jurisdictions of England, the parish of Chester, and the several counties of the principality of Wales, within their respective jurisdictions, or to the ecclesiastical or other peers or barons of parliament, or of any person qualified to serve as knight of the shire by 9 Ann. cap. 5.

14. Nothing in this act, or in 5 Geo. 2. cap. 18, shall extend to any peers, or lords of parliament, or to the several justices of the peace, within the several counties of the kingdom of England, and the several counties and the parishes of the several counties of the several counties.
being justices of the peace for such counties or places where they usually have been justices of the peace.

Sect. 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 commission.

Justices of the peace can only be appointed by the Lord Chancellor, and such commission must be in his name; but it is not requisite that there should be a special fact or application to, or warrant from the King for the granting thereof which is only requisite for such acts as are of a particular nature; as constituting the mayor of such a town, and his succeffors, perpetual justices of the peace, ingrossers and executors whatsoever, and of such persons, as may be either revocable by the King, or not 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 Commiiffion, cap. 5. Dalt. cap. 3. 1 Lew. 219.

Sect. 22. No justice of the peace, as it is at this day, was, according to Hawkins, entitled by the judges about the 23 Edw. is in subsidence as followeth. Hawk. P. C. 35. 4 Hyp. 471. Lamb. b. 1. cap. 9.

Beginning with a faltation from the King to the several persons named in it, it afterwards affigns them and every one of them his just power, and renders them the justices to keep the peace in such a county, and to cause to be kept all statutes made for the good of the peace, and quiet government of the people, as well within liberties as without, and to punish all those who shall offend against any of the said statutes, and to cause all those to come before them, or some of them, who shall have committed any felony. 12 Geo. c. 4. sect. 2. By sect. 5 all the justices of the Peace shall be qualified to sit in the House of Commons, as members for the counties of which such justices are appointed, or for the counties of which such justices are elected, or for the counties of which such justices are returned. 12 Geo. c. 5. sect. 8.

Then it goes on, and affigns them, and every two or three of them, (of which number either such or such a particular person among them is specially required to be,) justices, to inquire by the oath of good and lawful men if the county of any of all felons, would determine, inquests, forresies, magic acts, treafon, forefathers, reftoration, and for offenders of all other offences of which justices of the peace may lawfully inquire; also of all those who shall go or ride armed, or without a commission, to companies, in the disturbance of the peace, and all of all inholders and others, who shall offend in the abuse of weights or measures, or selling of unlawful provisions, or offending in the exercise of any other powers, than are therein provided; and to hear and determine all the felonies and other offences aforesaid; provided, that if a caufe of difficulty shall arise, they shall not proceed to give judgment, except in the presence of some justice of one of the benches or of afile. 2 Hawk. P. C. 35.

And it then demands the holding of the inquiries of the premises, and to hear and determine the same at certain days and places, which they or any such two or more of them shall appoint; and then it goes on, and demands the sheriff of the county to return before them, at certain days and places to be made known to him by them, such and so many lawful men of his bailiwick, by whom the two of the premises may be both known and inquired; and then concludes by affigning some one of them keeper of the rolls of the peace in the county, and commanding him to cause to be brought before himself and his fellows at the said days and places the writes, precepts, processses and inditnments aforesaid. 2 Hawk. P. C. 35.

My Lord Hale gives us the same commission, which at present, says he, consists of two claufls of affizrmans; by the first of which each of them is made a justice or conservator of the peace; by the second affizrmans power is given them, to the end of the reign of the quorum, to hear and determine felonies and other matters, for the bare making them justices of the peace without this clause, doth not give them power to hear and determine inditnments; he also takes notice of a preluf in the said commission, viz. that in case of difficultly arising, there be no power to augment all the justices of office come into the county, &c. 2 Hal. Hift. P. C. 40. Stumf. P. C. b. 2. cap. 5.

It seems agreed, that justices of the peace may by virtue of their commission execute as well the statutes made before the reign of Ed. 3, for the better keeping of the peace, such as the statutes of Heneage and Hiffminser, &c. as those made since that time; and yet the statutes which ordain justices of the peace, by nothing of the execution of these former statutes; from whence, says Haukins, it appears, that the King may by commission authorize whom he pleases to execute a statute. The former sect. 39. Dalt. cap. 5. Compt. 7. 8. 2 Hawk. P. C. 36.

Stat. 1 Geo. 3. cap. 13. sect. 1. All perions who were justices of peace at the demise of King George the Second, or who shall be justices of peace at the demise of his present Majesty or any of his succiffors, and shall afterwards be appointed justices of peace by any commission granted by his Majesty or his succeffors, and who shall take the oathes of office of a justice of peace before the clerk of the county 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 feffion of the peace, the oath required by 12 Geo. c. 6. sect. 3, may act as a justice for such county, &c. without being obliged to take and subscribe again the said oath, without incurring any penalty.

Sect. 2. After the paffing of this a&. no perion who hath taken or shall take the oathes usually taken by a justice of peace under a dedimus potestatem issuing 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 peron to administer again to any such justice, on any new commission of the peace being issued under the Great seal of Great Britain, the oathes 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 oath 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, prepare a parchement roll, with the oathes annexed to, and usually taken under the dedimus potestatem by justices of the peace, ingrossed on such roll; and shall administer without fee, the oathes in such roll specified to every such justice within the respective counties, &c. for which he shall act, who shall desire to take such oathes; and every such justice after the taking the oaths shall publish his name on the said parchement roll; and the said roll shall be kept by the respective clerks of the peace amongst the records of the fellow.

5. Of their jurisdiction in relation to treason, felony, inferior offences, and inditnments not taken before themselves.

It seems to be clearly agreed, that justices of the peace have not jurisdiction to hear and determine treason, premunire, or misprision of treason. Dalt. cap. 90. 1 Hal. Hift. P. C. 305, 359, 372. 2 Hal. Hift. P. C. 44. 2 Hawk. P. C. 39.

But as these offences are against the peace of the King and of the realm, any justice of peace may, either upon his own knowledge, or the complaint of others, cause any person to be apprehended for any such offence, and such justice may take the examination of the person apprehended, and the information of all those who can...
and therefore it hath been held, that only affluents and batteries, but libels, barratry, and common night-walking, and haunting bawdy-houses, and such like offenses, which have a direct tendency to cause breaches of the peace, are cognizable by judgments of the peace, as within the proper and natural meaning of the word, 1 Lev. 139, 1 Sid. 271, Latch 173, Poth. 208. Cray. fac. 32, Yew. 46.

But neither jejuny nor forgery, at Common law, nor any other such like offenses, which do not directly tend to cause a personal wrong or open violence, are cognizable by judgments of the peace, unless it be by the express words of the indictment, as within the proper subsistent meaning of the word. 2 Hal. Hisf. P. C. 44. 6. For the judgment of us, two or more judges, and how far a judge of a county or liberty may act out of them respectively.

Every single judge has regularly a jurisdiction thar 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 judge of peace; but the power of hearing and determining offenses is by the commission given to two or more, quaram unus, &c., and therefore if two judges, quaram unus, be empowered to do a thing, it must appear that one was of the quaram. 2 Hal. Hisf. P. C. 44. 5 Med. 329, Comb. 200.

So if a thing be required to be done by two judges, they must both be present at the execution of it; and if two judges adjudge a perfon the father of a bastard child, and the examination is failed by one of them, this is not enough for the examination being a judicial act contracted 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 judges are enabled to bail a perfon, they ought both to be present and not one of them first to sign the recognizance, and then send it to another. 6 Med. 180, 6. By flat, 26 Gen. 2. cap. 27. No act, order, adjudication, warrant, indention of apprenticeship or other instrument, made or to be made by two or more judges of peace, which does not express that one or more of the judges was of the quaram, shall be at all for the defect only.

A single judge cannot bail a perfon that is committed by order of the seffions, for he that bails must have as high a power as he who commits. 1 Kib. 857, 897 sid. ut. Bail.
If A. be a justice of peace in two adjacent counties, though by several commissions, as the recorder of London, as he, whilst he lives in one county, may fend his warrant to apprehend malefactors in another, and fend them to Norwich, as the county they are in, is the county both for London and Norfolk.


The justices of the peace have jurisdiction of felonies arising within the verge. 4 Ca. 46. a. Wig's cafe. 2 Hal. Hift. P. C. 53.

Justices of the peace for a county have, by their commission, an authority to commit any crime within their county, as without, and may execute their office within a town which has a special commission of the peace for its own limits, unless such commission have a clause that no other justices, except tho' named in it, shall any way concern themselves in the keeping of the peace within the liberties of such town. 2 Hen. Hift. P. C. 37. 2 Hal. Hift. P. C. 49.

Alfo it seems, that though such commission have a special exclusive clause, of which the justices have notice; yet their acts within a liberty are not void, though perhaps they may be punished for proceeding in defiance of such restrictive clause, as for a contempt of the King's prohibition. 2 Hal. Hift. P. C. 47; 2 Han. Hift. P. C. 37.

By the 9 Geo. 1. cap. 7. feel. 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 limits of which he is not appointed justice of peace, although not within the limits of the county, and may be lawful for any such justice of peace to grant warrants, take examination, and make orders for any matters which any one or more justices or justices of the peace may act in, at his own dwelling house, although such dwelling house be not within 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 confid:able, thingman, 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, confidables, headboroughs, tithingmen, bondholders 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 warrant 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 are contributory to the support of the house of correction of the county, riding or divisiblity of 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, and delinquents; as such as are within his county, and such as are in a foreign county, he is to bring him to the gaol or justice of that county where he is taken, for he does 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 supposition and forfeit.

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-feffions for any such county or riding, from any order or thing relating to the peling or place where such justice is so charged.

Stat. 24 Geo. 2. cap. 55. sect. 1. In case any perfon, against whom a warrant is issued by any justice of the peace of any county or place within the province, shall escape from any other county or place, out of the jurifdiction of the justice granting such warrant, it shall be lawful for any justice of the peace of the county, &c., where such perfon 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 form to be affixed by a full and sufficient severality to the perfon bringing such warrant, and to all other perfon to whom such warrant was originally directed, to execute such warrant in such other county, &c., out of the jurifdiction 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 offense, 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 affizes or general gaol-delivery, or next general quarter-feftions of the peace for the county, &c., where the offense was committed, such justice of such other county, &c., before whom such offender is brought, shall take bail of such offender for his appearance at the next affizes, or general gaol-delivery, or at the next general quarter-feftions of the peace for the county, &c., where such offense was committed, as the justices of the peace of the proper county, &c., might have done; and the justice fo taking bail shall deliver the recognizance, together with the examination or confession of such offender, and all proceedings relating thereto, to the confable, or perfon apprehending such offender, who is to deliver over such recognizance, &c., to the clerk of affizes, or clerk of the peace of the 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., where the offense was committed, and the same proceedings shall be had thereon; and in case such offender shall not perform to such recognizance, &c., 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 confable or other perfon shall forfeit 10l. to be recovered by bill, &c., in any court at Willmington, by any perfon who will sue for the same, in which case it shall be lawful for any other, &c., to indorse at the same offense for which such offender is apprehended in any other county, &c., not to be bailable in law, or such offender give not bail for his appearance at the next affizes or general gaol-delivery, or next general quarter-feftions of the peace for the county, &c., where the offense was committed, to the satisfaction of the justice before whom such offender is brought, in such other county, &c., then the confable or perfon apprehending such offender, shall carry such offender before a justice of peace of the proper county, &c., where such offense was committed, there to be dealt with according to law.

Sect. 2. No action of trotofha, 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 perfon 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 made.

Where a city hath justifes with an exclusive claue, the justifes of the county cannot act in matters of exco; as where the question was, Whether, as the city of New Sarum had an exclusive commiufion of the peace, the justice of the county of Wiltons could by virtue of 12 Car. 2. cap. 29. and 15 Car. 2. cap. 2. act in exco matters within the city. This case was argued three times at the bar, and this term the Chief Justice delivered the refo-
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 rates or rates of such fees, and to be legal for every such justice of peace or other officer, and all others which in their assistance, or by their command, shall do any thing touching their offices, to plead the general issue. Not guilty; and if the verdict fall with the defendant, or the plaintiff become nonsuit, or suffer any continuance of the same before whom the matter shall be tried shall allow the defendant double costs.

Stat. 21 Jac. 1. c. 12. sect. 5. If any action upon the cafe, trespass, battery, or false imprisonmeat, shall be brought against any justice of peace, mayor or bailiff of a city or town corporate, headborough, port-reeve, confable, titheman, collector of suitably or tithe money, by any thing done by reason of their offices, it shall be lawful for every such justice of peace or other officer, and all others which in their assistance, or by their command, shall do any thing touching their offices, to plead the general issue. Not guilty; and if the verdict fall with the defendant, or the plaintiff become nonsuit, or suffer any continuance of the same, the defendant shall have double costs.]

Stat. 24 Geo. 2. c. 44. sect. 1. No writ shall be found out against, nor any suit at law or any process at the suit of a subject shall be served on any justice of the 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 same is brought or served, and then shall be lawful for such justice of peace as aforesaid, to plead the general issue. Not guilty; and if the verdict shall fall with the defendant, or the plaintiff become nonsuit, or suffer any continuance of the same, the defendant shall have double costs.]

Stat. 27 Hen. 8. cap. 25. Justices of peace within liberties. (Judicarii ad pacem infra libertates.) Are such in cities, towns, or other corporate towns, as those others of the counties, and in cities, towns, or other corporate towns, as those others of the counties, and in every city, town, or other corporate town, as those others of the counties, and the authority or power is all one with their several precincts.

Stat. 5. No evidence shall be given by the plaintiff, on the trial of any such action, of any case of action, except such as is contained in the notice.

Stat. 6. No action shall be brought against any con- stable, headborough, or other officer, or against any per- son acting by virtue of any act of a county or city, any thing done in obedience to any warrant under the hand and seal of any justice of the peace, until demand hath been made or left at the usual place of abode, by the party intending to bring such action, or by his attorney, in writing signed by the party demanding the same, of the want and copy of such warrant; and the same hath not been re- fused or neglected for six days after such demand; and in such case after demand and compliance therewith, any action shall be brought against such constable, &c. for any such case as aforesaid, without making the justice who signed or sealed the said warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant notwithstanding any defect of jurisdiction in such justice; and if such action be brought jointly against such justice, and such constable, &c. then, on proof of such warrant, the jury shall find for such constable, &c. notwithstanding such defect of jurisdiction; and if the verdict be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner as to include such costs as such plaintiff is liable to pay such defendant for whom such verdict is found as aforesaid.

Stat. 7. Where the plaintiff in any such action against such justice, or any other defendant, shall obtain a verdict, in such case the judge before whom the cause is tried, in open court certify on the back of the record, that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff shall be intitled to double costs.

Stat. 9. No action shall be brought against any justice of the peace, for any thing done in the execution of his office, or against any constable, &c. acting as aforesaid, unless commenced within fix calendar months after the fact committed.

Stat. 10. Justices of trade-boats. Were a kind of justices appointed by King Edward the Fifth, upon occasion of great disorders grown in the realm, during his absence in France, 6 Geo. 2. c. 15. In the 5th Edw. N°. B. fol. 52. where it is stated that they were justices of trade-boats. But by Edinb. Act and Stat. Trade-boats, so called (say they) of trading, or drawing the fluff of justice: Or according to 30 1 Rep. fol. 25. for their summary proceeding, who say also, they were, in a manner, justices in oyr, and their office of 34. One of the duties of the justice of trade was to make inquiry through the realm, by the verdict of substantial juries, upon all officers, as mayors, sheriffs, bailiffs, escheators and others, touching extortion, bribery and other such grievances; as intrusions into their lands, a barons and breakers of the peace, with divers other offenders; by means of which the injuries of the peace, and the liberty of the subject, were made good, and the subject was made free from the power of the justice of trade.

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 case such justice neglects to tender any answer, or have tendered insufficient answer, 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.
...when and cause. And as the French word tral, i. to draw; and bajon, a staff, and the reason of this my supposition is, that the King of England having in those times many occasions in France, by reason of their frequent wars there; and observing that the marathins of France had a large power, with which they were invited by the delivery of a bajon to those who were in their office and authority; when they returned, and found strange disorders grown here, in imitation of that, erected these justices, who (as they say) had a bajon delivered them as the badge of their office, so that whoever was brought before them was tralite a bajon, tradition ad baculum; whereas with submission, may their name easily be deduced, and they called justices de tralit-bajon, or justice in imitation of the badge a bajon. We find a commendation of tralit-bajon, from Roger de Grey & fitus jusit. apud S. Alkmnon, ann. Regni Regis Ed. 3. Jofe cowenquen, 5. Coutell, edit. 318, Grant, edit. 161, of the said justice, viz.

Juditice, or Jurisdiction, (Fr. jugeur,) A justice, or jurisdict. The Lord Birmingham, justice of Ireland. Baker's Chron. Angl. fol. 118. The whole jurisdiction which is now distributed among the several courts of Westminster Hall, seem in the first 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 justice, who was an officer of very great authority, and used in the King's absence beyond sea to govern the realm as vice-regent. 2 Hearc. P. C. 62. The next jurisdiction over the conquest were Odo bishop of Bayeux in Normandy, half brother by the mother to the conqueror, and William Fitz Osbern, who was viscount, and had the same power in the north that Odo had in the south, and was the first in the conqueror's army. Brayd's Preface to the Norman History 151. (B). Dagd. Chron. Series 1.

The next jurisdictions were William Earl of Warren in Normandy, a great commander in the battle against Harold, and Richard de Benfanta, alias Richard de Tinebridge, son to Gilbert Earl of Brion in Normandy, and were constituted in 1073. Brayd's Preface, &c. 151. (B). Dagd. Chron. Series 1.


In the beginning of William Rufus, Odo was again jurisdicty. William de Carelebo bishop of Durham, a Norman, succeeded Odo, and then followed Ranulf Flambard in 1088. Aswards in the reign of H. 1, in 1080. Hugo de Bisaldon, a Norman, was jurisdict, and after him his son Richard Bajet was; then Roger bishop of Salisbury, was jurisdicty and chancellor. The next, in the time of King Stephen, was Henry duke of Normandy, afterwards King Henry II. And in Henry the Second's time was Robert de Belle Monte earl of Leiticef in 1169, but (as we常说 a basoton) it may be supposed to have been jurisdict before him; and after him of Leiticef, Richard de Lacie, was made jurisdicty; and after him in 1180. Ranulf de Gloucest, that famous lawyer was made jurisdicty; after him, Hugus de Fatac, commonly called Pajet, Patet, or Pouhy, nephew to King Stephen by his mother, was made jurisdicty and chimney parts beyond Trent; and William of Long-Camps, alias Hugus de Champ, bishop of Elis, was at the same time by Richard the First, made jurisdicty on the fourth parts of this side Trent. Then, after the deprivation of William bishop of Els, Walter archbishop of Aragon in Normandy, was made jurisdicty of all England. Brayd's Preface, &c. 151. (D) (E) (F) 152. (A) (B) (C). See Dagd. Chron. Series 1, 2, 3, 4, 5.
Jullitia, Was anciently used for a judge, and some- times for a statute, law, or ordinance. Richardus Dei, ""fo- trium, Sciell, nos de communi pium nimium confilto, rifs his jullitias subjiciens, "Fovenden, p. 666."

Jullitia, is often taken for jurisdiction, or the office of a judge. Leg. Edw. Conf. cap. 26. Jullitia cognominis latenis sunt. e. de benem. fa."

Jullitia, He who now is called jullitarius was formerly called jullitius, n. c. a judge. Leg. H. cap. 42. Jullitia juxta, sed a communitatis urbanus denuo nominatur.""

Jullitidas ferice, Is to hold ples of any thing, Mr. Ulen, in his Notes upon Eadmer, mentioning that tea which was held at Pimenden between archbishop lanfranc and st. bishop of Bayeux, tells us, Their place

Jullitius laudabilis, 2»X

Jullitius, A casting from the profession of law, and exercising justice in places judicial. Cowell, edit. 1727. See Insertation.

K.

43A. A key or what?: Area in litera sancta- rum atque exserdorandum novitatem cane, e. compati- telli ablibulig (clavium inflar) firma. Spelum.

Batagutum, The toll-money paid for loading or un- loading goods at a key or what?: Pat. 20 Ed. 3. ""

Balanburn, Rural chapters, or conventions of the rural dean and parochial clergy; so called, because held on the kalends, or first day of every month: As at first in three weeks, and at last only once a quarter, and by some wholly intermitted, to the great decay of - discipline. See Paroch. Actis. p. 640.

Balanburn, The beginning of a month. See Calend. Lanc. Accr. According to the description of Mr. Hum- bry Loyd, out of the laws and ordinances of Howelde, which derived its denomination from one hundred towns, and signifies as much, under which were contained so many commons, which the Whyth call comenage, and signifies province or region, and cometh of twelve manors or circuits, and two townships. We find the word men- tioned in Mon. Angl. i part. fol. 319, thus—Le Moni- queur Compresseur de rois l'entier de la terre de Brekehoch. Cheih Bristart de Neirmarch Norman. See Caunter.

Carte, Cartte, The religious called their beet con- vertible drink, or their strong beer, by this name; be- cause after meals they used to drink their peculi caritas, or ad caritatem, i.e. their grace-cups, in this left- hand manor, as is shown. See Cartouche.

Cartel, (Law.) A man; and sometimes a fervant or clown. Hence the Savois called a famamon a harsicron, and a domestick servant harsicron. This word is often found in Douay, Schim's Muse Clasum, and other ancient records. From hence, by corruption, comes our modern word charge. Cowell, edit. 1727.


Bay. See Ibrp.

Artage, (Settlement): A privilege to demand money for the purpose of desiring in a port or harbour. Rist. Pari. 1727.

Artel. A strong tower in the middle of any other fort or castle, wherein the besieged made their last efforts of Vol. II. No. 90.

Ker, 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 Hereford. See Paroch. Actis. p. 592.

Keeper of the forest. (Cajpes forsetis.) Is also called Chief Harden of the forest. Manwood's Foret Law, part 1. pag. 150, and hath the principal government of all things, and the check of all officers belonging to the same; and when it pleased the Lord Chief Justice in time of the forest to keep his justices-feet, he lends 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 aughtfull in the summum, which see in Man- wood, ab supra.

Keeper of the Great seal, (Cajpes Magni Sigillii,) Is a Lord by his office, and fills the Lord Keeper of the Great seal of England; he is one of the King's Privy council; through whose hands pass all charters, commitions and grants of the King under the Great seal; without which seal all such instruments by law are of no force. For the King is in the interpretation of law a corporation, and palfeth nothing firmly but under the said seal, which is as the publick faith of the kingdom in the high esteem and reputation justly attributed thereto. This Lord Keeper, by the statute 5 Eliz. 18, hath the same place, authority, preheminence, jurisdiction, execution of laws, and all other customs, commodities and advantages, as hath 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. Ca. 4 infra. fol. 87.

Keeper of the Privy seal. (Cajpes Privati Sigill.) Is a Lord by his office, through whose hands pass all charters figure, and all other charters, as hath the Great seal, and some things which do not pass 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. Garden del Privi seal, in Rot. Parl. 11 H. 4. num. 28. And Lord Privy seal, and one of the great officers of the Kingdom, by 34 H. 6. e. 2. Seesp. 640.

Keeper of the Custom, 12 Hen. 6. 14. Seems to be that officer in the King's Mint, at this time called The Master of the Assay. See Print.

Keeper of the liberties of England, By authority of parliament. See Cutlers liberates.

Brerets, A fort of coarse Welf cloth, mentioned in stat. 23 H. 8. e. 3.

Brigell, A commutation for a customary duty for carriage of the goods of Cutlers. See Cutlers.

Kernellare domum. To build a house with a wall or tower, kernell or crenelle, with cranes or notches, for the better conveniency of shooting arrows, and making other defence. Spelman derives it from the Sax. symel, a feed or kernel; from whence, fays he, crenetes, to rise in knobs or bunches. But De Prisco juftly ref- fepts on this violence done to the word, and finds it to be quadrans or quadracrenes, a four square hole or notch; abicoques patern quadruncis fcefensera. This form of walls and battlements for military ufe, and chiefly for shooting with bows and arrows might possibly borrow name from quadracres a four square dart. It was a common favour granted to the Kings after their last rebellion, demoliished, to give their chief sub- jects leave to fortify their manor-houses with krenellated wall. Licentiam dedimus Johanni de Hondio quod ipse manum juan de Basfolfe juven Breduhi in con. Buok. muro de petra & cole firmare & kernellare fiti. Dord. 12 Sept. 1312. Paroch. Antis, pag. 533. Which form of work does now appear in the place of Basfolle. Buok. Colewll, edit. 1727.

Kerellatius, (from the Lat. Crena, a notch,) For- tified or embattled, according to the old fashion. Et dux (ie. Lunc,) dixi, quod ipse commutat pro se & horribilissimam vis in cœrsumjuan de Halton, kernellatam. Pl. de Croma, et Castrorum, 1 Ed. 3. fortificationes de ter- tellis. Rej. St inid. quodam cœrsum duplici muro kernellatam, &c. Survey of the Dutchy of Corn- well.
Private Council and other great officers to continue six months after the King's Death, unless, &c. 6 Ann. c. 7. f. 8.

The great seal and other publick seals to be sealed as the seals of the fecouer, until, &c. 6 Ann. c. 7. f. 9.

The fecouer impowered to appoint a regency, 4 Ann. c. 8. 6 Ann. c. 7. f. 11.

Precedency of the Princes Sophia, &c. settled, 10 Ann. c. 1.

The Civil List granted to King George. 1 Geo. 1. c. 1.

Reward for apprehending the Pretender, 1 Geo. 1. c. 1. f. 9. 9. 2. c. 13. f. 8.

Provision for Queen Caroline when Princes, 1 Geo. 1. c. 32.

Principality of Wales granted to King Geo. 2. 1 Geo. 1. c. 37.

The restriction in the ait of settlement that the King should not depart the land, &c. repealed, 1 Geo. a. c. 3.

Annuities granted on the Civil List to discharge debts, 7 Geo. 1. c. 27. 12 Geo. 1. c. 2.

 Provision made for his Majesty for the Civil Government, 1 Geo. 2. b. l. c. 1.

His Majesty enabled to be governor of the South Sea company, 1 Geo. 2. b. l. c. 2.

Provision made for Queen Caroline, 1 Geo. 2. b. l. c. 3.

Provision for the debts of King Geo. 1. 1 Geo. 2. b. l.

The Prince of Orange naturalized, 7 Geo. 2. c. 2. 8. 3.

Annuity granted to the Prince Royal, 7 Geo. 2. c. 1. 3.

Prince of Wales naturalized, 9 Geo. 2. c. 24 & 28.

Provision made for the Princes of Wales, 10 Geo. 2. c. 29.

Settlement on the Duke of Cumberland and the Princes, 12 Geo. 2. c. 15.

Provision of a marriage portion for the Princes Mary, 13 Geo. 2. c. 13.

Annuities granted to the royal family, freed from taxes, 15 Geo. 2. c. 19. f. 21.

Regency of the first born of the crown descending to a minor, 24 Geo. 2. c. 24.

His Majesty impowered to grant entries to the vassals of the principality of Scotland, during the minority of the Prince, 25 Geo. 2. c. 20.

The royal family exempt from the land tax, 3 Geo. 2. c. 2. 3. 2. fed. 92 & 93. 4 Geo. 2. c. 2. fed. 95 & 97.

Establishment of the court or civil list, 1 Geo. 3. c. 3.

Hereditary and temporary excise, tunnage and poundage, pelf-office, and small branches carried to the aggregate fund, 1 Geo. 3. c. 1. fet. 3.

King may be governor of the South Sea Company, 1 Geo. 3. c. 5.

To provide for the administration of government, in case the crown should descend to any of the children of his Majesty, being under the age of 18 years; and for the care and guardianship of their persons, 5 Geo. 3. c. 27.

King of heralds. Rex Heraldorum, Is a principal officer at arms, that hath the pre-eminence of the society. See Herald and Catter. Among the Roman he was called pater patriae.

King of the Thistlest. Rex Thistlest. Is the court or judgment-feat, 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 and 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 specially exercised in all criminal matters and pleas of the crown, leaving the handling of private contracts and civil actions to the Common Pleas and other courts.

Graunt, lib. 1. cap. 2. 3. 4. and lib. 10. cap. 18.
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king the case. 25, 44.Ed. 3. 34. B. Comm. Jurif. 131.

But the court of King's Bench will not give judgment on a conviction in the inferior court, where the pro-
ceedings are removed by certiorari, but will allow the appeal, if it is from a public, and not a" de nuce, and
to go to a trial upon an issue joined in R. R. Cuthb. 6, adjudged in the case of one Baker, who was convicted at
Kington upon Hull, for speaking seditious words.

Nor can a record, removed into the King's Bench from an inferior court, regularly be remanded after the term in which it came in; yet if the court perceives any praclice in endeavouring to remove such record, or that it is intended for delay, they may in difcretion refuse to receive it, and remand it back before it is filed, 2
Hawk. P. C. 7, and several authorithes there cited.

Also by the construction of the statutes, which give a trial by juries, the King's Bench may grant such a trial in cases of felony, and other crimes of high


countries, because for such trial, not the record, but only a transcript is sent down. 4 Iusit. 74. 

And by the 6 Hen. 8. cap. 6, it is enacted, "That the King's Bench have full authority, by difcretion, to

remand as well the bodies of all felony removed thither, as their indi" combustions, into the countries where the felonies were done; and to command the justices of good-delivery, judges of the peace, and all other justices, to proceed thereon after the course of the Common law, as the said justices might have done, if the said indictments and prisoners had not been brought into the said King's Bench." This act extends not to high treason. 25 Hen. 8. the country in the case the sovereign judges of oyer and terminer, good-delivery, conservators of the peace, &c. also the sovereign corontors; and therefore where the sheriff and coroners may receive appeals by bill, a fertori they may; also this court may admi perons to bail in all cases according to their discretion 4 Iusit. 73. 3. 1.8. B. 4 Iusit. 74. 1. Ingh. 157.

2. Of its jurisdiction in civil causes, and in reforming and keeping inferior jurisdictions within their proper bounds.

2. At the first division of the courts, the original appear plainly to have been, to confine the jurisdiction of the court of King's Bench to matters merely criminal, and accordingly soon afterwards it was enacted by Magna Charta, cap. 11. That Common Pleas shall not follow our courts, but be held in a certain place: Hence it is, that at this day this court cannot determine a new re-

action. 17 Ed. 3. 350. 1. Ed. 3. 536. 547.

But notwithstanding Common Pleas cannot be immedi ately boildt Rano Regis, yet where there is a defect in the courts, where by law they be held originally, the may be held in R. R. as if a record come out of the Common Pleas by writ of error, there they may hold per the et alia, where the plea in a writ of certiorari, &c. was removed out of the county by a R. on a writ of error, repлюд. &c. 2 Iusit. 23. 4 Iusit. 72. 113, &c.


So any action vi & armis, where the King is to have

fine, as ejeclment, treasif, forfeible entry, &c. being a

mated nature, may be commenced in R. R. 2 by

also any officer or minister of the court, entitled the privilege thereof may be there sued by bill in de covenant or other principal action; for the act takes no away the privilege of the court. 2 Iusit. 23. 4 Iusit. 72. 2 Iusit. 123.

And this negat the notion, that if a man were taken as a tresoffier in the King's Bench, and there in calu-

lives might die and him in debt, covenant or a
for the King has an universal jurisdiction over all his subjects, and consequently may call any of them that fled from the justice of his own court.

2. All process on indictments, all process on offences committed in the same county wherein it is tried, may be removed immediately; but that where it proceeds on an offence removed by certiorari from another, there must be fifteen days between the issue and return of every process, 9 Co. 118. 3 Lev. L. 134. 1 Sid. 72. 2 Rot. Alt. 629. 2 Inf. 550.


28. Sting's handbill. In the reign of King Edward III. 16,000 l. per ann. and no more, was appointed for the King's household; and anno 29 Hen. 6, the charge of the household was reduced to 12,000 l. a year. But in Queen Elizabeth's reign, the profits of the kingdom being very much advanced, 45,000 l. per ann. was allowed and continued for her household. And when the reign of King Charles II. the parliament, for the honour of the King and kingdom, settled on his Majesty 200,000 l. per annum. In the reign of King William III. and Queen Anne 700,000 l. a year was allowed for the support of the household, and ordinary charges of the civil list. And his Majesty King George I. had the like sum of 700,000 l. per annum settled upon him by parliament, and going out of the duties of excise, wine licence, post-office, &c. As to his late Majesty King George II. the duty of excise on ale, beer, &c. was granted with a further subidity of tonnage, and the yearly sum of 100,000 l. out of the same. So in all cases, where the ordinary refuses to grant probate of writs, &c. Wild was of the same opinion, that if any court refuse to do justice, this court may command him; and in this case, it will be in the power of the attorneys to delay justice; and therefore the court, being the record, and informed him of the same, will convene the aggregate for that court to judge the attorney, and that it was a dangerous matter to deny justice in such a manner, and mentioned the abbott of Crewland's cafe, 2 Ed. 4, where the liberties werefeit because he had not officers. Burton v. Singleton, Hill. 20 Car. 2. 3 Keb. 432. S. C.

3. How for its presence fulfends the power of all other courts; and the form of its proceedings.

This court being the supreme court of oyer and terminor, gaol-delivery and eyes, its presence fulfends the power of all other courts of the same nature in the county wherein it sits, during its sitting there, especially if the judges of such courts have notice of its sitting. H. P. C. 156. 9 Co. 118. 27 Aff. pl. 1. 2 Inf. 27. 2 Hawk. P. C. 8. or without notice, 9 4 Inf. 73.

But if an indictment is found in a foreign county to be removed before commissioners of oyer and terminer into the county where the King's Bench sits, they may proceed; for that the King's Bench not having the indictment before them cannot proceed for this offence. 4 Inf. 73.

But if an indictment is found in the vacation-time in the same county in which the King's Bench sits, and in term-time the King's Bench is adjourned, there may be a special commissio to hear it. 4 Inf. 73.

The civil side in the King's Bench commences actions on a superseding of a trespass committed by the defendant in the county wherein it is committed, and to this extent is taken up by process of that court, as the sovereign eye, and being committed to the marshal, he may be declared against in any civil action whatsoever. See Plutarch.

The first process therefore is a bill either real or reign-ed, and for this reason, because its object is to counteract complaint in court, or to make the trespass; on this is founded the latitut, which supposes that the defendant had escaped, and therefore issues in the King's name, to apprehend the party where-ever he may be found; Vol. II. N°. 100.
appears in the relation and figure of it given by Mr. Knol in his travels, pag. 28.

Upper-time. No salmon shall be taken between Gravesend and Hopn upon Tames in upper-time, viz. between the Bruton of the Croes (3 May) and the Epi-
cus of the Thames (3 September), 1636. Cowell, ed. 1727.

Bullying guilt. An ancient record remaining with the Remnant of the Exchequer; so called from its being the inquest of John de Kirby, Cowell, ed. 1727.

Bardner, A synod; sometimes it is taken for a song in the church or velsy.

Bullying. An old Sax. word for a man-servant, and so used in Ed. 3. a. 1. cap. 6. and Veseygan in his Revolution of Deceived Intelligence, cap. 10. believes it is borrowed from the Dutch capa, which signifies the same thing. And that is some kind of officer or servant, as Jessina was he that wore the weapon or shield of his master; this is in the Laws of W. Ancremon, and in the French engefer. Matt. S. 6. Peer mens jact in domo paralysit, was in the Saxon translation turned into kan wraute. It was sometimes of old used as a titular addition. The word is now perverted to the hardest meaning, a taffle and deceitful fellow. But it has a sense of simplicity and innocence; it first signifies a child or boy, Sax. endel, whence a knave-child, i.e. a boy disyngulized from a girl in several old writers. — A knave child between them two they gate.—Guer, Pae, fol. 52. 106. And Wick all in his old English translation, Ed. 1. xvi. If it be a knave child, i.e. a son or male child. Afterwards it was taken for a son or servant, or by degrees, for any serving man: As in the vilen of Pier Platon, Cooks and her knaves eydren hot pyes hote, i.e. Cooki, and their boys, or scullions. Cowell, ed. 1727.

Knights, (Sax. eng. Lat. miles, and esus usurans, from the gift purs he usually wore, and thence called anciently knights spes frome.) The Italiun term them Cavalleri, the French Chevaliers, the German Ritters, the Spaniards cavallores, &c.) In its original properly signifies a vassal; but there is now but one instance in which it is taken in that sense, and that is knight of a flower, 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 called by 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, Gamen, in his Britan, thus shortly expresseth: N皆ro vero temporum, qui equeftrum dignitatem suam impetui non fautorum, etsi eum temere locutus, legibus gestero, perempto eum suspe aliorum auctoribus qui se cognosce, etc. Vel solus Caviare quoniam domino ubi, i.e. Sorge aut equeftrum nomine Dei. This is meant of knights bachelor, which is the lowest, but most ancient degree of knighthood with us. By the Han. Ed. 2. cap. 1. all gentlemen having a full knight's fee, and having a full right of barony, are called knights; for knight is the term of every vessel compelled to be made knights: But that is regulated by 17 Car. 1. cap. 20. The privilege belonging to a knight, see in Fer's Glory of Gosperity, pag. 116. Of knights there are two sorts: one spiritual, lo called by divines in regard of their spiritual warfare, the other temporal. Caffinotus of God's Money, part. 9. confecrat. 2. See Selden's Titles of Honour, pag. 240. Full and partial, he had been in the commission granted to a bishop, to knight all the perfons in his diocese. Calibish's Reports, fol. 398. Of the several orders, both of spiritual and temporal knights, see Mr. Aisnold's Jyst. of the Knights of the Garter, He who served the King in any civil or military office or dignity, was formerly called a miles: This is often mentioned in the old charters of the Anglo-Saxons, which are subs-
cribed by several of the nobility, viz. after bishops, dukes and earls, per A. B. militem, where miles signifies some officer of the court, as miihager was an officer to manage the privy seal. This is well read in Ingoldsby, Du don F. quadrant Milius kniht Reg. fol. 880. After the word restrained to who he served only upon some military expedition, or rather to him who by seal of his tenure was bound to serve in the wars, and in this sense the word miles was taken pro servilatu. This is well read in the poem of Thun the Conqueror: Alabiet ciMax fide dedi, vacilla fob ab 40 in miles a Denuo.

receit. And he who by his office or tenure was bound to perform any military service, was furnished by the chief lord with arms, and to espedateor in military, which the French call adeliber, and we do sbch a person a knight. But before they went into the service, it was often a lase, to take a bundle of gold and wrapt themselves, and afterwards they were girt with a girdle; which custom of bathing was constantly observed, especially at the in-
aguration of our Kings, and then those knights were made, who for that reason were called Knights of the Bath. Cowell, ed. 1727.

Knights Lunnerre, John Coptfield, for his valiant service against the Scots, had the honour of baronet con-
ferred on him and his heirs for ever by patent. 29 Ed. 3. part. 1. m. 2. See Lunnere.

Knights of the Bath, See the antiquity and ceremo-
ny of their creation in Dagdale's Antiquities of War-
ningham. These in the Laws of W. Ancremon, and in the French engefer. Ault. S. 6. Peer mens jact in domo paralysit, was in the Saxon translation turned into kan wraute. It was sometimes of old used as a titular addition. The word is now perverted to the hardest meaning, a taffle and deceitful fellow. But it has a sense of simplicity and innocence; it first signifies a child or boy, Sax. endel, whence a knave-child, i.e. a boy disyngulized from a girl in several old writers. — A knave child between them two they gate.—Guer, Pae, fol. 52. 106. And Wick all in his old English translation, Ed. 1. xvi. If it be a knave child, i.e. a son or male child. Afterwards it was taken for a son or servant, or by degrees, for any serving man: As in the vilen of Pier Platon, Cooks and her knaves eydren hot pyes hote, i.e. Cooki, and their boys, or scullions. Cowell, ed. 1727.

Knights of the Chamber, (Milites camerorum,) Men-
tioned in 2 left. fol. 666. and in Rot. Pat. 29 Ed. 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. In the Laws of W. Ancremon, and in the French engefer. Ault. S. 6. Peer mens jact in domo paralysit, was in the Saxon translation turned into kan wraute. It was sometimes of old used as a titular addition. The word is now perverted to the hardest meaning, a taffle and deceitful fellow. But it has a sense of simplicity and innocence; it first signifies a child or boy, Sax. endel, whence a knave-child, i.e. a boy disyngulized from a girl in several old writers. — A knave child between them two they gate.—Guer, Pae, fol. 52. 106. And Wick all in his old English translation, Ed. 1. xvi. If it be a knave child, i.e. a son or male child. Afterwards it was taken for a son or servant, or by degrees, for any serving man: As in the vilen of Pier Platon, Cooks and her knaves eydren hot pyes hote, i.e. Cooki, and their boys, or scullions. Cowell, ed. 1727.

Knighlengen. Was a gild in London, consisting of nineteen knights, which king Edgar founded, giving them a portion of void ground lying without the walls of the city, now called Portoken ward. Stow's Annals, p. 151. This in Mon. Angl. 2 pag. fol. 82. a. is witten englent.

Knights' fee. (Fedum militum.) Is so much inher-
ance, as is sufficient yearly to maintain a knight with
convenient revenue; which in Henry the Third's was
151. Camb. Britan, pag. 111. But Sir Thomas Smith, in Repub. Angl. lib. 1. cap. 19. rates it at 40l. and the statute for knights, a 1. Ed. 2. 1. such as had 40l. 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, 60215 knights fees, according to others 60215; whereby the re-
ligious house, before their suppression, were from their bathing the night before their creation; their place being for
knightes bachelors, and after baronets. This order was re-
established by King George the First in the year 1725, who erected the same into a regular military order for
ever, by the same and title of The order of the Bath. See Stow's Annals, p. 151, and note.

Knights of the Garter, (Equites Garteri, or Peri-
fecti,) Are an order of knights first created by King
Edwards the Third, after he had obtained notable victories, who, for furnishing of this honourable order, made a change out of his realm, and all Christendom, of the best and most excellently renowned knights in virile and ho-
our, beflowing this dignity on them, and giving them a blue/garter, decked with gold, pearl, and precious stones, and a bundle of gold to wear daily on the left leg, a kirtle, crown, cloak, chaplon, a collar, and other flately and magnificent apparel, both of fluff and fashion; exstinct and herioical to wear at high feasts, as to high and properly an order was meet. Of which and his fue-
cedors, Kings of England, were ordained sovereign, and the left fellows and brethren, to the number of twenty
six.
Unihts of the | State, (Libels contim.) Otherwise | called Knights of parliament, are two | knights or gentlemen | of worth, chosen upon the King's writ, | in plono contimis, | by the freeholders of every county | that can dispene 40s. | per annum, anns 1 Hn. 5. cap. 1, | and 10 Hn. 6. cap. 2, | who are in a manner called Knights of | the Guard, and fourteen | 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 fu- lleneck, | or means of living, but the | allowance of this | house, which is called the | service of God and St. George. | There are also | certain officers belonging to | this order, viz. | The prelate of | the garter, which office is | inherent to the bishop of | Windsor for the time being; the | chancellor of the garter; | the regent, who is always | dean of Windsor; the | principal king at arms, called | Garter, whose chief | business is to manage | and marshal their dependencies | at their yearly feasts | and installations. | Lastly, The usher of the garter, who | is also the usher of | the black rod. | The see of this | college is the | castle of Windsor with the chapel of | St. George, preceded 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 | garter in their | living, being taken to | wear the garter, | the first in the | left side of the | robe, and the | second in the | right. | But, in the course of time, | the garter is put | into the | pocket, and the garter is | put on the | left side of the | robe. | Sir William Dugdale, writing | on this subject, says, | that it | was first worn in | the island of Malta, | where they | have done great exploits against | the infidels, but | especially in the year 1559. | They live after | the order of friars, under the | rule of St. Augustin, | of whom mention is made in the | statute 25 Hn. 8. cap. 2. | There is also | a convent of friars | of the same order that | had the government of the whole | order within | England and Scotland, | Reg. Orig. fol. 20, and was | the altior prior in | England, and late in the | Houses of parliament. | But towards the end of Henry the Eight's days | they in England and Ireland, | being found over much to | their business, | was granted to them, | and their lands and goods given | to the King, by the | 32 Hn. 6. 24. | For occasion | and propagation of this order more | specially described, see in the | treatise, intitled, The Book | of History and Arms, lib. 5. cap. 18, written by | Mr. Richard Tever. | Camden, edit. 1677. | Knights of Malta. See Knights of | the order of | St. John of Jerusalem. | Knight Marshal, (Marechal Huitijit Regis,) Is an | officer of | the King's house, having jurisdiction and cognizance of | transgressions within the | King's house, and | verse of it; as also contracts of made within the | same house, | whereof one of the house is a party. | Reg. of Writs, fol. 185. a, and 194. s and Spelman's Gloss. in | these matters. | Knights of Rhodes, 33 Hn. 8. 2. 24. See | Knights of the | order of | St. John of Jerusalem. | Knight-errant, (Servitium militare,) Was a tenure, | whereby several lands in this nation were held of the | King, which drew after it | homage and service in war, | usage, ward, marriage, &c. but is taken away by | statute from the pope against the | King's enemies, but | all the other by | the same law, and | land held by | knight-errant is called | Tainland, and land held by | Scagie, reveland, fol. 66. a. | Servitium militare nulli nisi | Regi & regni principis ultius. | Mat. Par. an. 1746.
LABE. The narrow lips of paper or parchment affixed to a deed or writing, for an apposited seal, is called a label. So any paper annexed by way of addition or duplication to a will or testament, is called a codicil or label. Cowell, ed. 1727.

LABIA. Watery land; in qua facile labitur: We read it in the Mosaic law, 20:12. So many dispute ligii popula hostiliter transeunt in aqua & labiis terribiliter.

LABORATORIUM, A writ that lies against such as having not wherewith to live, do refuse to serve, or for him that refutes to serve in Summer where he served in Winter. Reg. Orig. sed. 189.

LABOURERS, Required to serve those that will retain them for the usual wages, 23 Ed. 3. c. 1. &c.

Their wages afferent, 25 Ed. 3. b. 1. c. 1. &c.
13 Ric. 2. c. 4. 23 H. 6. c. 12. 11 H. 7. c. 22. 6.
H. 8. c. 3. 7 H. 8. c. 5.
Shall be hired in a public place, 25 Ed. 3. b. 1. c. 2.
Shall work in summer where they dwelt in winter, 25 Ed. 3. b. 1. c. 2.

Juries shall fix wages of labourers, 25 Ed. 3. b. 1. c. 3. 31 Ed. 3. st. 1. c. 6.
The fines arising on the statutes of labourers granted to the commons in aid of their subsistence, 25 Ed. 3. st. 7. 36 Ed. 3. st. 1. c. 14.

Restrictions on masons and carpenters, 34 Ed. 3. c. 9.
Proceeds of outlawry against labourers flying into other countries, 34 Ed. 3. c. 10.

Labourers or servants flying into cities shall be delivered to their masters, 34 Ed. 3. c. 11. Commisions on the statutes of labourers shall be made to the justices of peace, 42 Ed. 3. c. 6.
The statutes of labourers confirmed, 2 R. 2. st. 1. c.

8. 2 H. 5. c. 4.
Artificers and apprentices compelled to work in harvest, 12 R. 2. c. 3.

Children serving in husbandry till twelve years old, shall continue in husbandry, 12 R. 2. c. 5.
Their wages shall be settled by the justices in their fequisitions, 13 R. 3. st. 1. c. 8. 2 H. 6. c. 16.

Shall not be hired by the week, &c. 4 H. 8. c. 14.
Shall be sworn in the feast to serve, or be fet in the stocks, 7 H. 4. c. 17.

The penalty for excessive wages to be inflicted on the takers, 2 H. 6. c. 4. on the greater, 4 H. 8. c. 5.
The justices of peace to make proclamation once every year of the wages of servants and artificers, 6 H. 6. c. 8.

A servant purposing to depart, to give his master warning, 23 H. 6. c. 12.

For journeysmen of cloth-makers, tailors and shoemakers; and for servants in husbandry and bargemongers, 3 & 4 Ed. 6. c. 22.
The hiring and wages of servants regulated, 5 El. c. 4.

The wages of servants, labourers, and artificers shall be determined by the justices of peace, 5 El. c. 4. &c.

Penalty of giving greater wages, 5 El. c. 4. &c. 18.
Refusing to work at harvest to be fet in the stocks, 5 El. c. 4. &c.

Women obliged to serve, 5 El. c. 4. &c. 24.

None above 21 obliged to be apprentice, 5 El. c. 4. &c.

Fees to justices, &c. fitting to execute this statute, 5 El. c. 4. &c. 38.

Minor bound by indentures of apprenticeship 5 El. c. 4. &c.

Copies may be granted against servants, &c. departing into other fifties, 5 El. c. 4. &c. 47.

Of what labourers the justices of peace may afford the wages, 39 El. c. 12. 1. &c. 1. c. 6.
Langetrapum, Langetrap, a law-day, or time of open court. Cowell, ed. 1727.

Lagman, or Lajmant, (Lagmanus) Huma legitale (legitimae) such as call Now Good men of the same, so as Lord Coke in his Commentary of the same, was of opinion, that a legman was he who had fociam & fociam super homines, i.e., who has a jurisdiction over their persons and estates, and those were the thambus or barton of that age; so that this Ulvet the Son of Forn is said to have been lageman of the city of York. Where doubtless it signifies some chief officer, as judge or recorder. The Lord Coke in his Commentary of the same, says, of the Confesoria, cap. 38, thus, Pigula inquinuit justitha per legamannos, & per meliores homines de burges, &c. But in lib. ilis also de Scutulib., Uset the Son of Forn is said to have been lageman of the city of York. Where doubtless it signifies some chief officer, as judge or recorder.

Lagen, (Lagina) Fleta, lib. 2, cap. 8, q. In ancient times it was a measure of six fescutarii. Hence perhaps our Flagon, Dominio inferius de sex lagenis aliis annotatur. Charta 2 Edw. 3. m. 25. n. 82. The Lieutenant of the Tower has the privilege to take annum lagannam at a fine of 50s. and carry so much wine as they can take up the Thames. Sir Peter Lesterr, in his Antiquities of Cheshire, interprets legana vini, a bottle of wine. See Driartel.

Lagon, or Lagan, is such a parcel of goods of the mariners in danger of shipwreck cast out of the ship; and cause they know they have been heavy and sick, they taken to them a curb or cork, so that they may find and evade them again. If the ship be drowned, or otherwise lost, their goods are called legan or ligan a ligons, nd so long as they continue upon the sea, they belong to the admiral, but if they are cast upon the land, they belong to the town and city, and belong to him that hath saved them, as appears in Cap. 6. fol. 129.


Lairquere, Lecherwite, Legerquemul. Pana vel pulula, offenduntur in adulterio & fornicatione, which wittowes doth belong to some lords of manors, a reference to their villains and tenants, which Fleta, ib. 1. cap. 47. seems to infer. See Co. 4. Inj. f. 296.

Lammasday, (monday of) in flat. 23 Hen. 8. cap. 40.) Is the first of Auguf, and so called quafi lamb-mojis, because lamb were not fat to eat, they were grown too old; after, from the Saxon higwanafe, q. t. hig-waefi, because on that day they rented us an offering of bread made with new wheats. On which day the tenants that old lands of the cathedral church of York, (which is dedicated to Peter ad Vincula) were bound by their tenant to give a live lamb into the church at high mass on that day, the Culte of Auguf.

Lamp Black, To what duties liable, 4 Will. & M. 5. sect. 2.

Lamp, See Fifth.

Lamp. See Lights, Pubbing.

Lantrafer. Persons outlawed in Lancashire to forfeit which, what they have in the county, 9. 5. 5., 13. 2. 18. 6. 5. 3. 1. 8. 5. 6. 2. 5. 31. 6. 5. 2. 6. 3. 1. 8. 5. 8. 6. 2. 6. 3. 6.

Justices to be appointed under the King's seal of Lan


The supeficiency of judges to indict a perfon in Lancas-

fide, who dwell in another county, 33. 6. 6. 2. 6. 3.

Proclamation upon exiguous to be awarded into Lanca-

fide, 5 & 6 Ed. 6. c. 26.

Lands fevered from the dutchy, reunited to it, 2 & 3 Ph. & Mar. c. 25.

Lantrafer. Those services and duties which in the

Saxon times were laid upon all that held land, which were three obligations called trinoda necassae, expedition, burgbehto and brighte: Which does the Saxons did not call seftiva, because they were not feudal services arising from the service of the owners, but lantrafera, rights that charged the very land whenever did require, churchman or layman. Vide Smyca of Fruits, e. 10.

Lanlord. See Diftrafe, Leafe, Rent, Tenant.

Lantrum, Terricula, The terre-tenant.

Lanstar. The ancient method of taxation was by

Diftrafe, which was on lands held by knight-service; and by taille on the cities and boroughs, and it was
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 ascribed after the justities 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, they were summoned into court, and if there were any forfeitures of their charters, quo warranto came out, to seize their liberties into the King's hands. But Ed. I. found this way of taxing by escuage and tallage to be very incomplete; because wars were drawn out into great length and expense; and therefore he formed into difficult and onerous taxes, the tenants in capite that held great baronies, and were called the barons majoris, (the now peers of parliament) and the representatives of the barons minoris and of several corporations, viz. the citizens and burgesses, of whom he made one body; which now comprises the house of commons. *Gib. Tract. of the Excheq. 1522.

King Edward the Fifth granted the people Magna Charta, which they had long contended for, and also the charter of the forests; and for Magna Charta they granted the King a fifteenth, by the name of Quindecimam partem omnium bonorum; so that instead of particular affections in the King's servants, the King was to have a fifteenth of the proffits of all their substance: This fifteenth seems to have been at first made out of the ecclesiastical tenth; for the people claimed the tithes of all benefices; it was therefore easy to know, by the people's collections of his tithes, what was the value of every ecclesiastical benefice, free, for the tenth was reckoned one pound, and therefore the fifteenth must be 1 s. 4 d. The benefit consisted of the glebe and the tenth part of the township; therefore by the value of the benefice, deducing the glebe, they knew the true value of the township, and how to find a fifteenth upon it: So that the fifteenth of the township was to be the fums that were set by the King's taxes and collectors under the act of parliament; and commissiouns were granted to the taxers and collectors of them under the Great seal: but in collecting of the fifteenth the fums only appeared in the books below. And the collectors of every township, either returned their collection into the Exchequer, or else they were head collectors for the whole county, who returned it thither; there were likewise commissiouns appointed, to superintend such taxation and collections: But about the time of Edward III. there were certain established fums set upon every township; and so, as the King's wants increased, they gave one, two, or three fifteenths. *Gib. Tract. of the Excheq. 1534, 159.

We find in the times of Henry the Eighth, Queen Elizabeth, and King James the First, that they raised both fubbies and fifteenths; this was, because of 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 fubbtie should be raised by a pound-rate upon lands, and likewise a pound-rate upon goods; and we find in the fubbie 4 Car. (which is said to be the greatest fubbie that ever was given, and which pafled upon the petition of right) there was 4 1/2 in the pound laid upon land, and 2 1/2 8 d. upon goods; now there were several rents to the 2 s. 8 d. 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 chafed out by the act of parliament to appoint commissiouns, affioliors, and collectors, to give rates and get in the said fubbie. This was found very inconvenient, because the commissiouns used to be favourable to their own country, therefore it was found necessary to revive fo far the ancient method, as to appoint a certain fum; and in the time of the civil war, the long parliament would not settle any general method to their satisfaction, but the appointment of commissiouns was made in the act itself: And in this new manner of taxing, they appointed the fum to be levied on each particular county, in the act itself; as well as the commissiouns names, and where to levy it: And

the six afflicted counties, viz. London, Middlesex, Kent, Suffolk, Surrey, and Hertford, being not spoiled and pillaged in the civil wars, and more hearty to the parliament interest, were taxed higher than any other counties in England. *Gib. Tract. of the Excheq. 1594, 1595, 1596.

As to the revenue due from the English in his wars with France, it was neceffary to come into a land-tax; and from 1684 to 1693, the tax was made by a pound-rate, like the former fubbies; but when the people found that the war was like to hold, about 1693, the tax was mightily levered, every body being willing to ease their neighbours; and then they came to lay a rate upon every county, and the affociating counties, being very zealous for the government in the revolution, and having taxed themselves higher than their neighbours in 1693, it was argued that those counties were better able to bear the tax, and therefore in 1693, they laid the proportioned sums that are now the standard of the land-tax: Let us now compare the fubbie law, 4 Car. I. with the present land-tax, and consider the manner of gathering them. *Gib. Tract. of the Excheq.

In the old time, according to the way of making war then used, the tenants per baroniam, and by knighthood, and the people of the towns, who are the corporation, were to be in the camp 40 days, at their own expence, and the escuage was levied upon the defaulters; but when the art of war improved, and armies were brought into the field that continued a long time, they made their taxation by way of fubbies; which was so much in the pound upon the goods, that during the war, as the expenses of King Charles were 21 5 d. per pound on the personal, and 4 s. per pound on the real estate; and where there were different times of taxation and collecting, they were called to many different fubbies; and the spiriuitully gave their tax in convocation, and the temporality in parliament; but the convocation-tax always paited both houses of parliament and was not bind as a law till it had the content of the legislature. Their tax was made according to the rate in the King's books, and since a tenth was paid yearly to the Crown, they only taxed the other nine parts as they flood in those books, *Gib. Tract. of the Excheq. 1597, 1598.

The temporality and spirituallty 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 according to their spirituallty. The commissiouns for executing the act, were appointed by the Lord Chancellor, Lord Treasurer, or other great officers of the Crown, or any two of the Chancellor being one. *Gib. Tract. of the Excheq. 1598.

The present land-tax, tho' it follows the plan of the fubbies, 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 commissiouns appointed in 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 neceffary to fet a fum upon each particular county; and so they taxed them according to the highest fum that had been levied in such a county; and then they set the fum aside, and they being then in opposition to the Crown, they named the commissiouns in the act itself; and this way of taxing was afterwards followed at the reforation, because they found it for the ease of the Crown to name particular sums in the act of parliament, and then they named commissiouns also, who were to affio and rate each particular inhabitant. The commissiouns by the fubbie, 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 fay, by making the distribution of the particular fum upon each particular hundred, lathe and wapentake; but by both, they were to subdivide themselves; and the respective commissiouns were not to act out of their diiftriit. The commissiouns by the land-tax are to give a note to the receiver general, of the names of the acting commissiouns, and fums in each diiftriit. We do not find this clause
the old subsidy law, because it was not necessary, here there was not a particular sum imposed on each, and the commissioners, both in the subsidy and land-tax, were to issue their precepts to the collectors, to receive the money, to be accountable to the commissioners, and to return such authentic records of the commissioners; who by the land tax were to return the names of the collectors. And by both laws, the sums aggregated might appeal from the collectors to the commissioners; and also flock upon land is excused from paying as personal estate. Gilb. Treat. of the Excheq.

By the subsidy law, the commissioners appointed collectors; but by the land-tax, the assessors brought in the names of the collectors; because the place was answerable for the sums so assessed, until they were paid in to the receiver general; and therefore it was necessary that the assessors should appoint collectors: But by the subsidy law, there was no particular sum locally fixed; and therefore the collectors were appointed by the commissioners, who acted in behalf of the Crown; and the assessors' names were returned in, by both laws, to the receiver general in high collectors; and this disposition of the court receiver might know in whose hands the money was. In the subsidy, the commissioners appointed 4 high collectors in each fire and division, to whom 4 sub-collectors were accountable, and the high collectors were accountable to the Exchequer; and one duplicate of the assessments was given to the receiver, and another to the Exchequer, to be a charge on the high collectors' receipt: But according to the sum of the land-tax, the receiver is now appointed by the Lord Treasurer; and by this law, a duplicate of each particular division is given to the receiver general, and another to be returned to the Exchequer, by the due time; that returned into the Exchequer, to charge the receiver general. Gilb. Treat. of the Excheq. 200, 201.

The high collectors by the subsidy law, gave security to the commissioners by recognizance, to answer the money by them received; but now, the receiver general, by the constitution of the treasury gives security to the crown. In the subsidy law and land-tax, the under-collector was disqualified the parties refusing to pay the sum assessed; and by the subsidy law, the under-collectors paid in the money collected to the high collector, who was an accountant at the Exchequer; but by the land-tax, the sub-collectors pass the money to the receiver, and have the accountant at the Exchequer. If the collectors did not pay in the money they had collected to the receivers, the commissioners were to imprison them, and seize their effects; but if the proportion was not assessed to the receiver, the principal was answered for by the commissioners. By both laws, the collectors had receipts and assessments delivered; and, under such precepts, had authority to distrain the lands and goods of the persons so assessed, by virtue of the act. By both laws the parties were to be taxed for goods, in the place where they dwelt. By both laws the deferts were to be held of right, and paid to the owner; by the subsidy law, in eight days; by the land-tax, in four days: And for neglect or refusal to pay, and failure of distress, the party to be imprisoned. By the subsidy law, all the commissioners joined in one certificate; but now the commissioners, in each division return their effects, which are a charge upon the receiver general; but in the land-tax, if a non-payment in any place is certified by the receiver under his hand, the Exchequer proceeds to fine against the offending commissioners. By the land-tax, if land doubly taxed comes into protestant hands, and they get a certificate from the commissioners, and prove the truth of the certificate beyond all doubt, the owner must be relieved, and the court of Exchequer is empowered to discharge such farm from the parish or township in which the land lies, and that discharge is carried to the house of commons, in order to be discharged out of the general farm the next year. Gilb. Treat. of the Excheq. 203, 204. See Stith Fox, Tax.
But here we must observe the difference between grand and petit larceny; which is again divided into simple and mixed 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 in value 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 mixed 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 for all civil offences excluded by acts of parliament. S. P. C. 27. Crim. 33. H. P. C. 74.


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. Crim. 36. H. P. C. 76.

2. If any at several times steal 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. Crim. 26. H. P. C. 7. 1 Hawke, P. C. 95.

3. If any be indicted for stealing 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. 1 Hawke, P. C. 95.

4. All things which are under a natural disability of differing 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 Hawke, P. C. 2.

5. 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 Hawke, P. C. 2.

6. If a woman be guilty of larceny, if the be of her own voluntary act, or by the bare command of her husband, and steal the goods of a stranger, but not if the steal her husband's, because a husband and wife are confedered as one person in law; and the husband by endowing his wife at the marriage with all his worldly goods, gives her a kind of interest in them; for whence, even a stranger can't commit larceny in taking the goods of the husband by the delivery of the wife, as may be taken away the wife by force, and against her will, together with the goods of the husband. S. P. C. 65. 1 Hawke, P. C. 2, 93.

7. Of what nature the things taken must be, to constitute the offence felony.

8. How for the goods ought to belong to another, and what shall be deemed a felonious and fraudulent taking, and carrying away.

9. Where the offender is or is not excluded his clergy, or is to be transported.

10. 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 the military tenures every tenant was obliged to attend in the camp; and there being no provision made out of the publick fliick for them, as there is now-days for our mercenary soldiers, it was customary for every freeman to carry with him his own provision, which obliged them to a very feverre and rigid justice upon all persons who should violate any man's property;
any other goods of like value with the money due on such orders, tallies, bills, bonds, warrants, debentures or notes, respectively or secured thereon, and remaining unsatisfied by such offender shall suffer such punishment as he or the said or may have done, if he or the had stolen other good of the like value with the money due on such orders, tallies, bills, bonds, warrants, debentures or notes, respectively or secured thereby, and remaining unsatisfied."

It is also established, that in the trial discipline, that was observed in the camp, that the diffinition is raised concerning beasts that are free natures; for those that are for the provision of a man, when reclaimed, are within the protection of the law; and 'tis felony to steal them, because these answered the use of the camp for their necessary food and livelihood. And it is ordained, that cattle and the like, that are not used for provision, may be stolen without any danger of death, for they are not within the inconvenience for which the law was provided.

H. P. C. 66. 7 Ch. 18. 1 Haw. P. C. 93.

But to steal hawks reclained is felony, because they were used for the entertainment of noble and generous person, and were carried into the camp for diversion there; and therefore were confined within the same provision.

3 Inf. 109.

Wherever it is felony to steal beasts, it is so in relation to the young beasts, because they by right of accession follow the condition of the dam. 3 Inf. 109.

2. How for the goods ought to belong to another, and what may be deemed a felonious and fraudulent taking, and carrying away.

The taking of goods, whereas no one had a property in the time, cannot be felony; and therefore he who takes away treasure-trove, or a wreack, waif or stray, before they have been seised by the persons who have a right thereto, shall only be punished by fine, &c. 3 Inf. 109. H. P. C. 67. 1 Haw. P. C. 93.

And for this reason there can be no doubt but that the taking of domestick beasts, as horses, mares, colts, &c. or of any creatures whatsoever, which are a natural nature, and fit for food, as ducks, geese, turkeys, peacocks, or their eggs, or young ones, is felony. H. P. C. 68. &c. 1 Haw. P. C. 94.

But those taking hawks or any other wild beasts, or taking fish to a river, or any other great water, wherein they are at their natural liberty, he is not guilty if he takes them; but he who takes them out of a trunk or pond is guilty of felony, because being thus secured, he thereby the dominion of them. Owen 20. 3 Inf. 109. H. P. C. 97.

And for this reason he who seizes them, is not guilty of breaking open the box, and the goods in it carried away, it is felony; 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 given, and no man has a right to open it out from 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 appointed; besides, it is for publick convenience that the judge of the one way shall be free from the other way.

3 Inf. 103.

But though if I lend a box to the carrier, and the carrier fails in it, this is not felony, yet if the box be broken open, and the goods in it carried away, it is felony; 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 given, and no man has a right to open it out from 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 appointed; besides, it is for publick convenience that the judge of the one way shall be free from the other way.

3 Inf. 103.

He who hath the bare charge of goods, as a shepherd hath of sheep, or a butler of plate, or that has only the special use of goods, as a guest in an inn, and not the possession, may be guilty of larceny, in fraudulently taking them away, for the offence comes as properly under the word ciptis, and the fraud is as secret, and the villany more base than if it had been done by a stranger. Mort 246. Poph. 84. H. P. C. 99.

If he who intending to steal goods, obtains a delivery of them from the thief, by virtue of a reprieve, or by way of execution of a judgment obtained by imposition on a court, without any colour of title, by false affidavits, &c. he may be indicted as having feloniously taken them; for if one intends to steal, he is indicted for such theft, and can be indicted for such theft, and will not in its title be included by such theftful evasion. 3 Inf. 108. H. P. C. 63. Keeling 43. 1 Sid. 254. Roper 276.

Also he, who steals goods from one who had stole them from me, may be indicted as having stolen them from me; because in judgment of law both the possession and property of them was always in me; and for this cause, he that steals goods in the county of A. and carries them into that of B. may be indicted in either. 1 Haw. P. C. 65.

It was formerly a doubt, whether a lodger, by reason of the special property he had in the furniture of his lodgings, could have a right of larceny of such furniture only, but not by the 3 & 4 W. & M. cah. 9. it is enacted, That if any person or persons shall take away with an intent to steal, imbezil, or purloin any chattels, bedding or furniture, which by contract or agreement he or they

4 X 212
are to use, or shall be let to him or them to use in or with such lodging, such taking, Intercepting or purloining, shall be to all intents and purposes taken, reputed and adjusted to be larceny and felony, and the offender shall suffer as in case of felony. K. &. L. 50, 57.

1 Haw. P. C. 91.

For the word _afterward_ be necessary in every indictment for this species of felony, yet the felony lies in the very first act of removing the property; for if the felon be caught in the act of carrying the goods away before he is out of the house, it is felony; for the act of the mind declared by subsequent facts makes the crime.


Hence it hath been adjudged, that where a gueft having taken off the feet from his bed with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was guilty of larceny. 3 Kyll. t. 109. Dec. t. 103. 1 Haw. P. C. 92.

So where person having taken a hore in a close, with an intent to steal him, was apprehended before he could get him out of the close. 3 Kyll. t. 109.

So if a person pulls off the wood from another's flock, or strips their fkins with an intent to steal them, he is guilty of felony. Grim. 56.

The defendant, intending to steal plate, took it out of a trunk, where it was, and laid it on the floor, but was surprized before he could carry it away; and it was adjudged felony. K. &. L. 521.

3. Where the offender is or is not excluded his clergy, or is to be transmitted.

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. 11 Co. 29. 5 Kyll. 634. See 2 Haw. P. C. 337, &c.

And therefore it may be laid down as a good general rule, wherever a person is denied the benefit 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. 231. 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.

So where a person is denied the benefit of the clergy in respect of a statute excluding it from the crime charged against him, the indictment or appeal, and the evidence thereon, must expressly bring his case within the words of the statute. 2 Haw. P. C. 342.

A statute, by excluding principals from their clergy, doth not thereby exclude the accessories before or after, &c. and a statute generally excluding those who shall be found guilty of murder, robbery or burglary, or other crime, without fixing any thing of necessity, shall be construed to intend principals only. 2 Haw. P. C. 342.

Where clergy is allowable, those who stand mute, or challenge above twenty, or are outlawed, are as much intitled 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 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 take notice of 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, privey 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 arrangement, or will not answer directly to the same, according to the laws of the realm, or shall stand willfully, or of malice, or obstinately 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 1st of Ed. 6. cap. 12. and 2 & 3 Ed. 6. cap. 33. Horse-fencers are excluded the benefit of their clergy, and by the latter of these statutes it is enacted, That all persons feloniously taking or stealing any horfe, gelding or mare, shall not be admitted to the privilege of the clergy, but shall be put from the fame in like manner and form as tho' they had been indicted or appealed for feloniously stealing two horses, two-geldings, two grooms, or any other, and thereupon found guilty by verdict of 12 men, or confessed the same upon their arrangement, or Stand willfully, or of malice mure.

By the 10 & 11 W. 3. c. 23. All persons, who by night or day shall in any shop, warehouse, coachhouse or stable, and privately and feloniously steal any wares or merchandise of the value of 50L. or more, such shop, &c. be not broken open, and tho' the owner or any other person be not in such shop, &c., or that such affih, hire or command any perfon to commit such offence, being thereof convicted, or attained by verdict or cursum, or other manner, or more, such person, being thereby indicted thereof 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 merchandise of the value of 400L. or more, either in a dwelling-house or out of the same belonging, alfo' such house or out of house be not actually broken by such offender, and alfo' the owner of such goods, or any other person or persons, be or not be in such house or out of house, or such affih or aid any person or persons to commit any such offence, being thereof convicted or attained by verdict or cursum, or other manner, or more, such person being thereby indicted thereof shall stand 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 shall extend to apprentices under the age of fifteen years who shall rob their masters as aforefaid.

By the 23 Car. 2. cap. 5. it is enacted, That no person who shall be indicted for feloniously cutting and taking, 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, or shall confess the same upon arraignment, or will not answer directly to the same, shall stand mute, or challenge above twenty, or shall stand willfully of malice mure, 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, shall to feal or imbezall of any of his Majesty's fall-clout, condole 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 of the person of any other, or by the colour of any 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 stolen,) it shall and may be lawful for the court before which they were convicted, or any court held at the same or any other place, with the like authority, if they think fit, instead of ordering any such offenders to be burnt in the hand, or whipped, to order and direct that such offenders shall be burnt, 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 any and all such persons serving in any 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 agents, for such term of years; and any such contract or conveyance, for which they are excluded 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 and authority to benefit a pardon, to order and direct the like transportation to any person, who will contract for the performance thereof, of 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, and the certificate may be given by any such other person 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 pardon obtained of felony, without the benefit of clergy, &c., provided, that the King may pardon and forgive any such transportation, and allow 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, or by any two justices of the peace, and any such offender 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 pardon, to whom any such court shall order any such offenders to be transported or conveyed, shall, before such offenders shall be delivered to their contract with such pardon as shall be appointed by such court, a a shall give sufficient security, to the satisfaction of such court, for the transportation of such offenders to some plantation in America, to be ordered by such court, and the procuring an authentic certificate from the governor, and from the officers of the land of such offenders, &c., and their not returning by the lawful default of such contract.

And it is further enacted, That all charges, in or about such contracts, shall be borne by each county, &c., for which the court was held, and that the respective justices 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 go on board, &c., they 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 respite, and if any such court shall order such offender, as a miner, or gould 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 affiit, and clerk of the peace, where such orders of transportation shall be made, shall on request of the procurator, &c., certify their appropriation, &c., shall certify their appropriation, conviction and order of transportation, to the justices of affiit, &c., which shall be sufficient proof of such conviction and order of transportation. See Clergy, Felony.

Loblawtum, The, border, or place where the land and meat were kept. — Vencesla de Pildung esurit facul
domini de fili obi emplim eos ad oblatum domini
domini. Paroch. Antiquit. p. 496. Whence hobotasticus Regis, the King's borderer, or clerk of the kitchen. Cowell, ed. 1727.

Lordsnag. In the mayor of Bradford in com
Hoit, the tenants pay to their landlord a small yearly

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LAW

fallis cuatatum, leth, hundred, &culpis inmulinum. In 8 Ed. 2. p. 8. 277.

Lathcro, or Leigbre, or Chuchigrewe, An officer under the Saxen government, who had authority over the third part of the country, or three or more hundreds or wapentakes: Whose territory was thereupon called a tithing, otherwise a lid or leston, in which manner they were divided in Kent and the rape of Sulgrave, to answer the same, and perhaps the Ridges in Yorkshire being now corruptly so called for tithings or tithings. Thos matters that could not be determined in the hundred court, were thence brought to the tithings where all the principal men of three or more hundred of the body of the hundred were assembled by authority of the Lathcro or Tithegrew, did debate and decide it or if they could not, then did send it up unto the county court to be there finally determined. Vid. Spenías ancient Government of England. Cowell, edit. 1727.

Latinum, is used by Sir Edward Coke for an interpreter, 2 Pet. Inf. fol. 51. 4. It seems that the word is mithaken, and should be latiner, 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 fays the word is used in an old inquisition. Britton, fol. 596, and also derived from the Vulgar-Latin, Latin. Cowell, edit. 1727.

Latin. Words which pfs under the name of Latin, are of four forts. 1. Good Latin allowed by grammarians. 2. Words significant, and known to the luges of the law, but not allowed by grammarians, nor having any countenance of Latin; and these two forts are within 3d Ed. 2. c. 15. 3. False or Incongruous Latin; thishall abate an original writ, but not vitiate any judical writ, count, pleading or judgment, (for in all such cafes false Latin shall be amended;) a mala fitorìa, it shall not avoid a grant or any deed, &c. And therefore false Latin nor false English will avoid a grant or other deed, with the intention to the parties on correspont with such words. 10 Rep. 132, the second resolution in Olberne'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, fêwed, defended, answered, debated and adjudged in the English tongue, but entered and approved in the Latin. Howbeit, the laws and customs of this realm, as also the term and procefs, shall be holden and kept as before this time hath been used.

Reolved, that this statute as to the first branch was introducive of a new law, but as to the other branches they were to be decided, being approved by the authority of the laws of England, and the term of the statute, the original writs, and all theproceses 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 ple. or special writ. 10 Rep. 132 b. Dig. 11. t. 4. B. R. Olberne's case.

False Latin shall not quash an indiement, nor abate any declaration; for although the original writ shall abate for false Latin, yet judicial writs, or a fine, shall not be impeached for false Latin. See 5 Co. Rop. Ling's case. But if the word be not Latin, nor a word allowed by the law, whether it be arti, (as in art and science hath its proper terms) but be insinuableness; and if it be in a material point, this makes the indiement insufficient, as burglarier, murdri, felonies, and the like, are terms of art well known in the law; and therefore if their words, or the like, be mistaken in an indiement, to the prejudice there of, it is not a moveable point which is not Latin, nor any word known in the law, this will make the indiement void and insufficient. See English.

Lattimtia, an interpreter of Latin; Gedulmum Arcti- torius, Lato Latimtorius. Dominy.

A Latin interpreter. Besides, 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 lack and lie hid; and therefore being served with this writ, he must put in security for his appearance at the day, for Latimtoris est nullitius, sive, curiae, amicos sociandis creditoris, jus aperte coluisse. 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 writ was, upon commencing a suit, to send forth a writ to the sheriff of the county where the defendants lived, and the writ thus returned, Non est inventus in habitu neo, &c. then was there a second writ filed forth, that had these words, Cam tristatum est quod latitare, &c. and thereby the sheriff commanded to attach him in another place where he might be found. Now when the tribunal of the King's Bench came to be settled at Westminster, the former ancient 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 elsewhere; but afterwards, upon pretence of eating the subject, and expelling justice, it was contrived to put both these writs into one, and to attach the party complained of, upon a supposal 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 writ the officer would go into the county of the man that was the man of the King's Bench, in whose custody, when he is, he may be fixed upon an action in that court. Cowell.

Latro, (Larotinum,) He that had the sole jurisdiction in a particular place de latrone. "Tu mentioned in Leg. V. 1. viz. "Sitis quod alibi aliquis faciat, telenum & latem num habere concedo. So in 5 Cal. 141. Spemian, faciam & facem habere in statum terram & latrociniun. This word in old charters is frequently used for the liberty of infangtho, or privilege of adjudging and executing of thieves.

Latta, A law. Cowell, edit. 1727.

Latitudini, A laundry, or place to wash in. There was once an old usage in England, for infaming any laundry in the porch or entrance, where the priests, and other officiating members were obliged to wash their hands, before the proceeded to divine service. Hence in the statutes of the church of St. Paul in London, it was ordained, Qua faciliter lavatorium in urbibus per ferventias frequentius mundari jucundius. Liber Statut. Excl. Paul. London. M. fol. 59, 6. But it was commonly an ever.


Laudum, An arbitration or award. Vid. p. 6c Cowell, edit. 1727.

Laubina, for Labina, Watry land, in qua suis fiat labiur. "Tu mentioned in Menagi, Angl. 2. tom. 3. pag. 372. In aquis, labinis, & mariis fusipere perisitantur. Lautegras, (Menioned in lat. 7 Ric. 2. cap. 13. A law that allowed the use of weapons now diffused, and prohibited by the said statute.

Laudorab. In Glamorganshire and some other part of Wales, they make a fort of food of a sea-plant, which seems to be the eylder-green, or sea liverwort. They call it Laver-brad. Near St. David's they call it Llareub or Llareoun, which I think they interpret black.

Laurae, Thoie pieces of gold which were coined in the year 1619, with the King's head leartened, were commonly called Laurens, the twenty shilling piece marked with XX, the ten shilling piece with X, the five shilling piece with V. Camden Antul. fac. 1. &c. Laurens, (Lax.) In the general signification is plain, an by Bredin thus defined; Lex est jactius jacta, jacta b nfa & problematis contra. And the Divine schools
LAW

as, Lex humana of codicis villorum consulis, qua divinus
antumn patent alto. This in our land hath been so
urit, Mammitius's law, translated out of the Brit-
nguage into Latin by Gildas, of which we find no oblique
enants to be of any use. Second, Mercenary, mentioned in
par. 94 and Polyd. in Hist. Angl. lib. 5. Thirdly, Vep-Saxone. And fourthly, Danefold. The laws
ed, Merchency, or Mercian laws, were compiled by
aria Queen of the Britons, and from her there was
nent, called Dunlaw, now called Danelaw, which their people were
ety, and they being afterwards destroyed, Edward the
iffer, or, as he now call the Common law; and therefore he
ed by his historians Anglorum legum redactor, The
enants were only general customs obtained through the
on, which for that reason were called Common; and
knew, because Leges omnis in commune reditibus, to be
ed by all, with such amendments as were made by
ather. Cassell, ed. 1727. 2.

William made many new laws, but
cluded the old, viz. St. Edward's later; and advoga-
ed none which concerned any composition or mulcts of
nticts. Cassell, ed. 1727.

At present the law of England is divided into 3 parts,
The Common law, which is the most ancient and gene-
law of the realm. 2. Statutes, or acts of parliament. And I
ay particular; for if it be the
al custom of the realm, it is part of the Common
ar. Co. on Litt. fol. 15. 1. Law hath an especial
ication also, wherein it is taken for that which is
ful with us, and not elsewhere: As tenant by the
of England. 13 Ed. 1. 3. And again, to wage
ite, and to make of or do legum, facere legem.
con, lib. 3. tract. 2. cap. 37. When an action of
ht be brought against one, upon secret agreement or con-
, as in an action of detinue for goods, money or
ets, and then or left with the defendant, the defendant
age his law, if he will, that is, swear certain per-
red or sworn, or the like, and he is bound to the
thing to the plaintiff, in manner and form as he hath
arated; which is intended by law to be only in cafe of
plaintiff's want of evidence, and when he cannot
orme his furmese by any deed or open act. When
his law, he shall bring with him so many of his
man than one, (see Edward Coke, 15 years old,) to swear with him, that they think in their
ences he hath sworn truly. And this law was used
actions of debt, without specialy: As also where a
man coming to court after such a time, as his tenement,
, or default, are set into the King's hands, will deny
al have been set forth. Cassell, lib. 1. cap.
12, Kitchen, fol. 164. This is borrowed from
ormally, as appeareth by the Grand Compendium, cap. 85;
ute Coke in his 4 Rep. fol. 95: Shah's case, says, it
originally from the judicial law of God, alleging it is the twenty-second chapter of Exodus, ver. 7.
The Parliaments call them that come to purge the de-
enants, Summariales, ib. Feud. tit. 4. tract. 3. & tit.
6 to 10. And the Civilians call them purgers. Sulf-
onal, says, Legem sibi esse potest exercitium dare per premitum
ire exigitamus, ut de praebendo faciemus a
n dictatorship cum induls consequentiam seu confor-
ere, quam cum quidem, ut contentio est contra
mong the Egyptians, as Exodus in his treatise De Moribus
vemius in urbe. Anciently leges was used as Latin for
as, Legem Regis Edwards obiit redit., &c. Magna
ante, Hen. 1. 1 Rich. 3. cap. 2. 31 H. 6. cap. 6.
ur Commoners, are properly and aptly termed Legi
illegally, because they are appropriate to this kingdom of
and have dependence upon any foreign law

whatever. Co. Inst. 2 part. 9. 9. These are the birth-
right, and the most ancient and best inheritance the
states have. Co. on Litt. lib. 2. cap. 12. fol. 213, and
in his Preface to the fast Report. All books written in
lue. Second, statutory, and after the times of the
and covenants of the Common law, and as such are
nual, being of one certain subject, as Stannard's Pies of the
lambard's justice of Peace. See Fulbeck's Parallels, cap. 3.
[end. 1727.
LAW OF ARMS. (Lex armorum.) Is that which gives
cepts, and the wars by which to proclaim war, to
uests to allure, to assault the enemy, and to punish offi-
der in the camp. Cassell, ed. 1727.

LAWDAY (Lagradayou) is otherwise called viro
frank pledge, or court-leet. In fl. 1 Edw. 1. cap. 4.

Law is it used for the county-court. Et quod terrae coven
etiam partes est de jetae comitum & bendarum
ferre. This lawday or Lagr-day, was properly any day in open court, and
ommonly used for the more solemn courts of a county or hundred.

LAWING of DAEs. Mutsiffes must be lawful every
three years, Cramp, Juris. fol. 163. that is, three claws of the
foot shall be cut off by the thin. Char. Fa-
lora, cap. 6. or the bail of the foot-cut out. See CEPHRAVE and Deltex.

LAEIDE that in Auge's Hill at Rushford in Effers,
Wenceslas, next morning, next after Michaelmas-day, at cock-
towing, is held a court, vulgarly called, The teawiffs court.
They whisper, and have no candle, nor any pen or ink,
but a coal, and he that owes fuit or service, and appears not,
forfeits double the rent every hour he is missing. This
court belongs to the honour of Northall and is de-
dominated Lawes, because held at unlawful or lawless
hours. This court is mentioned in Cam. Briton, the
Day, who fervile attendance was imposed on
the tenants, for conspiring at the like unfeasable
time to raise a commotion. Fol. 441. Cassell, ed. 1727.

Leaffifs man, (Sax. Leaffiffans man, eale) is oth-
erwise called an exiffis. Pro eelgite tendidor, cum principis
obedit nee ligit, & tune utelougietum fuit ille qui eft ex-
tran legem, sic ut laughrechfs man. Braunf. lib. 3. de Co-
non, cap. 11.

LAW OF MARQUE, (mentioned in fl. 27 Ed. 3.
. cap. 2. 1653. From the Common law, by virtue of
rims, a bound or limit; because they that are driven to
make use of this law, do take the shipping or goods of
that people of whom they have received wrong and can-
on get ordinary justice, when they can take them
within their own bounds or precincts. Cassell ed. 1727.

See LAUFFS.

LAWMERCHANT, (Lex Mercatoria,) is become a part
of the laws of this realm; for if there be two joint-
merchants of wares, and one of them dies, his executor
shall have the moiety; which is not in the case of
others not merchants. Co. on Litt. fol. 182. Strit.
. cap. 1. Ex. 11. 1. fl. 5. Cruises in Edw. 3. cap. 6. Charis
Mercaatoria, 31 Ed. 1. n. 4. grants this perpetual privilege to
merchants coming into this realm: Quod annus batalii, mi-
nifi riuorum, civitatum, burgum & villarum merca-
torialium mercatoribus antelidic complanit cum
entero jurisdicion faciunt de die in die mina dilata, se-
dam legem mercatoriam, de universis & singulis qua
erit comand legem stans mercatoris in eis.

LAW PROCEDURE, see English, Hires.

LAW SPIRITUINAL, (Lex spirituinalis,) is the Ecclesiastical
law, allowed by the laws of this realm, which is not
against the Common law, (whereof the King's prerogative
is a principal,) as also the statues and customs of the
law. In antiquity, according to the laws of the Ancient
lows, the ordinary and other ecclesiastical judges do pro-
ceed in causes within their cognizance. See Co. in Litt. 344. This was called Law Christian, and the ecclesi-
ical court, wherein this law was administered, was called
Christian Conunissions; and the rural dean, who was
judge or president of the court within his own di-

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And therefore for befores, and besides, they might have been considered as chattle, and go to executors. 3 Bat. Abr. 296.

Another reason was, because at first the leaves 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 had right to the lord of the land, if the lease thereof seems to be, because they were only made to serve the occasions and exigencies of the lord in cultivating and improving his domains, not to borrow money on, or raise portions for his daughters, or for 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 leaies, if they were evicted, being only to recover damages, it would have been fruitless to prolong the leases for the term of 1000 years, when the persons who were to possess under such leases had no remedy for their damages but by recourse to the representatives of the tenant's heir. Co. Litt. 45. b. 18 Mor. 164, 293.

It is indeed the rule of law that the another reason might be, because the leaves for years were under the power of the freeholder to destroy by a recovery, for the person coming in by the recovery, was supposed to come in by title paramount, and so was not bound or obliged by them, and by consequence few would be willing to take leaves for any long term, which they might so easily be defeated of. 3 Bat. Abr. 296.

But theo' in the reign of H. 7, it was resolved, that the lease shou'd not only recover damages as a recompence for the possession lost, but should also recover the possession itself; and the statute 21 H. 7. c. 15, gives the tenant or lessee the same right to recover the possession as in the cases of capitation and the scelum; and it was resolved by the courts, that if they were to be considered as chattels, then the suit should be tried by a common assize for the recovery of them, and not by a special assize; and that if the lessee could not recover the possession, then the suit would be in the nature of an assize for the recovery of the thing, which is one reason why leaves for years are considered as chattels, and cast upon the executor. 3 Bat. Abr. 297.

1. Of what things leaies may be made for years.
2. Things necessarily required in every good lease; and
1. Of what things leases may be made for years.

After such time as leases for years began to be looked upon as fast and permanent interests, and that the lefsees were not granted to do, or be granted what is called, the rights of a tenant for life, the possessors, against the acts and incroachments as well of the lefsees as of strangers, found it their interest to improve and encourage this sort of property, and therefore extended it to all sorts of intercells and possessions whatsoever, being less extensive 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 let for years, but also goods and chattels, tho' the intercell of the leffe therein differs from the intercell he hath in lands or houses for ever; for as one lease for years a flock of live cattle, another lease for two years a large piece of land, and the like, may be granted or parted with for the profits of them during the term, but yet the leffe hath not any reversion in them to grant over to another, either during the term or after, till the leffe hath re-delivered them to him, as he would have of lands in cause of such lease for years, for the leffe hath only a possibility of property in cause in all outlive the term; for if any of them die during the term, the leffe 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 falls absolutely in the leffe; so whether they live or die, set all the young ones coming of them, as lambs, calves, young beasts, flocks, &c.; the like, without the leffe being further concerned in them, are severed from the principal, once otherwise the leffe would pay his rent for nothing; and therefore this differs from a lease of other dead goods and chattels; for there any thing be added for the repairing, mending or improving thereof, the leffe shall have the improvement and additions, together with the principal, after the lease expired, because they cannot be severed without destroying the principal; neither is the succession of young ones, in case any of the old ones die, to be remitted to any corporation aggregate, whereby any leffe, that frome succeed shall be paid part of the same connection, for the corporation, in its public capacity, ever dies; but this being a lease of such and such individual cattle, when any of them die, the possibility of regaining property, which was left in the leffe, is determined, and at an end; but the leffe in such cattle cannot ill, defect, fail, or give them away, during the term, without an action of trespass, as it should seem; but in case of a lease of a house, together with goods, 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 covenant the leffe would have no other remedy but to recover the goods after the lease expired, by a suit in the Court of Common pleas, as the case requires. 300. Gals. 112. 1 Lem. 42. Owen 153. 5 C. 6. 17. Dyer 56. a. 110. a. 212. b. Bras. tit. Leafe 23. Bull. 7. Lit. 32. 7. Cor. Lit. 57. a. If one hath a cordle for life, he may let it to another, to the grantor himself; so may the grantee of house- liver, or bay-horse; but in cause such lease be to the leffe itself, rendering rent, he can only have them by way of retainer, being to arise out of his own provision, or is own land. Bras. tit. Leafe 40. But as to lands, or other things of inheritance, as they may be granted or parted with for ever, so they may be parted with for 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 these private interests must give way to the publick; and what might otherwise in its own state be good and allowable, must upon that account be disallowed and bloud condemned; whereas it having been the object of leases for years, to give them power, as such should go to executors or administrators; the real case wherein we find an objection to a lease for years, is that of the office of marshal of the King's privy, for that being an office of great trust, concerning the imminence of judicature in the keeping of prisoners, if it should be granted for years, might be the occasion of much thick, by being in such case liable to the provost of the will or imminence taken out; and if the officer should die inchoate, so that none would prove his will, or take our administration, then there would be no officer at all, and executors or administrators would be in the state of law, without allowance of the court; also it might be a question whether such an office should not be forsetted by outlawry, or be affixed to the office of the principal, in the event of the conveniences would follow, if such grant for years were allowed; for the same reason it was held likewis, that the offices of Coffers, lecturer, clerk of the pipe, of the King's silver, or of the crown, remembrancer or chancellor of the Exchequer, procurator, and other offices that being the several courts of justice, cannot be granted for years; and that the offices of teller C. and E. were granted for years, till restrained by 1 Ed. 8. 6. 7. it was never debated what inconveniences might ensue by allowing thereof; and these reafons held equally good against granting the office of warden of the Pinn, or any other guidship. Hard. 357. 9 C. 67. 1 Rel. Abr. 847. 2 Rel. Abr. 153. 4 C. 573. 10 C. 513. 3 Med. 145.

And although it has been resolved, that the office of the marshal of the King's Bench prison cannot be granted for years, yet it hath been held, that a lease thereof for years during the continuance of the grantee, cannot be granted; but 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 Marshal of the King's Bench.

It appears, that the dean and chapter of Waltham made a grant of the office of the warden for 563. the leffe had committed several offences which amounted to a forfeiture, for which the office was fidel, but no objection made to its being let for years. Ryn. 216. 2 Lec. 71. 3 Keb. 32.

But such offices as do not concern the administration of justice, but 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 spices 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 poftmaster was granted to the Lord Stanband for years, and held good. Hard. 352.

The office of registrar of policies of assurance in London concerning mortgages, was granted for years; was graded, 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 folettes was granted for years, and allowed to be good; and there were several precedents of ciphers made for years, either for the office of the king's privy, in which 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; 19. H. 8. of the Cath. Rich. good; and for hereby a fial 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 wits in Chancery and folettes, of comptroller and cumer, and of making proffeces in C. B. all these, 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. 351. 354. 357. Dyer 303. H. 140. 3 Keb. 56.

But where one made a grant for years of the feaward- ship of a coast, the court did not take it to be a grant as to the court-letting a judicial office, but good to the court-baron, being only ministerial, and the owners judges thereof; but the grant appearing afterwards to be for years, determinable upon the death of the leffe, it was held good for both, because there was no danger of its coming to executors or administrators. 2 Lec. 443. 2. fem. 126.
One Mrs. Demis was found by office to be an ideot

1. as nativitate; the King grants the custody of the body and estate to Sir Alexander Tresorer, 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 ideot die intelleat, 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 interel, and might have disposed of the prelms to his own use, or grant them over as he thought fit, in case of an ideot, though it was otherwise in case of a lunatic, 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 B. 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 lunatic. 2 Chon. Ca. 70. 1 Term. 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

ministrator, but only the tenant's diligence and care. 2 Rel. Rep. 374. Godb. 415.

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, whither the estate that should support them would go to the heir, and so introduce tumult and abridgment. Gr. Lit. 16. 8. 9 Ca. 97. 6.

By 23 H. 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; which proves that before this statute it was not unusual to let them to farm.

By the 12 Car. 2. cap. 23. sect. 27. The Lord Tre

asurer or Commissioners of the Treasury for the time be

ing, 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 12 Car. 2. cap. 25. sect. 3. Power is given to

the King's agents for granting of wine licences to any person or perfons for any time or term not exceeding twenty-one years, if such person or persons shall pay long half-yearly, and such licence not to be granted to any but those who personally use the trade of selling by re

tail, 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, upon such rents and covenants as shall be thought best for the good of the kingdom.

By the 23 Car. 2. con. 11. sect. 6. Power was given to

the master and chaplains of the Savoy, to encourage the rebuilding thereof, to demine any of the lodg

ings for any term not exceeding forty years, under such rents as they could procure, without renewing.

1. Things necessarily required in every good lease; and fluctuates concerning leases.

Regularly these things must concur to the making of every good lease: 1st. There must be a leflee, (as in other grants) and he must be a person able, and not restrained to make a lease, though he might be an ideot, 2dly. There must be a leffer, and he must be capable of the thing described, and not disabled to receive it. 3dly. There must be a thing dem

abled, 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 it be, there must be a full and sufficient stipulation letting for the term of a lefg, life, and the thing baid, and all such other circumstances, as selling, 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 in it comes to take effect in interest or p fission, and a certain term, whether by an express enumeration of years, or by reference to a certain unexpired estate, or by reducing it to a certainty upon some contingency preceding by matter or post facto, and then the contigu

ous must happen before the death of the leffer or lessee.

6thly. There must be all needful ceremonies, a liberty of doing justice in the life, in cases where they are requisite. 7thly. There must be an acceptance of the thing demised, and of the estate by the lessee; but whether any rent be reserved 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, land and wife, and ecclesiastical per

son. 1 W. c. Coxe. 864.

Stat. 32 Hen. 8. cap. 28. sect. 1. All leases made of any

manors, lands, &c., by writing intended 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 otherwife, shall be good in law.

Sect. 2. This act shall not extend to leases 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 end'd, within one year after the making of the new lease; nor shall it ap

ply to any rent or reversion, nor to any lease of lands which have not between twenty years last past

been to farm by the space of twenty years next before such lease made, nor to any lease to be made without imposition of waftes, nor to any lease to be made above the number of twenty-one years, or three lives, from any of the coverts; and upon such lease there shall be reserved yearly a rent or reversion, or more, as shall be found accustomably paid for the lands so leased in twenty years next before. And every person, to whom the re

version of such lands shall appertain after the deaths of such lefles, shall have like remedy against the lefles as the leffer might have had.

Sect. 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 the to feel the fame, and that the rent be re

turned, to the husband and wife, and to the heirs of the wife, according to the custom of the land; and that the husband shall not alien the rent longer than the time being, without the SAME, or the whomever the wife in party and privy only excepted.

Sect. 4. This shall not give liberty to such wife or her heirs, to avoid any lease made of any inheritance of the wife according to this act.

Sect. 5. No fine or other act done by the husband on

ly of any manors, lands, &c., being the inheritance or freehold of his wife, shall be any disannulment there

be to the wife or her heirs, but that they may enter according to their respective justices whereat the wife in party and privy only excepted.

Sect. 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 act.

Sect. 19. All grants made by an archbishop or bishop, or any bishop or primate, or the pope, or the bishop of his diocessop, to any person (other that to the Queen) whereby any estate should pass, other than for term of twenty-one years, from such time as it grant should begin, and w eacquire the old rent or mort

for the life of such estate, yearly, shall be void.

Sect. 18. (f. 14, sect. 5.) All leases, conveyance or etates, to be made by any master and fellows of any college, dean and chapter of any church, master or gaunt

dian of any hospital, parson, vicar or any other have
eclesiastical living, of any hereditaments, being parcel of the profits of such spiritual promotion (other than for the term of twenty years, or three lives, as the time such lease shall be made, whereupon the ascen-
toned yearly rent or more shall be payable yearly during the term) shall be void.

Sec. 4. This act shall not make good any lease made before the expiration of five years than are limited by the private statutes of the college.

Sec. 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 continuing, so that the lease to be made do not contain more than one of the years of the former lease, nor less rent than is referred in the form of the lease.

Declared to include head houses by 14 Eliz. cap. 14.

Stat. 13 Eliz. cap. 20, srm. 1. No lease to be made of any benefice or ecclesiastical promotion with cure, or any part thereof, not improper, shall induce longer than the lease the beneficed or ordinably reformed, and serv-
ing the cure of such benefice without abstinence above fourscore days in any year, but every such lease immediately upon such abstinence shall cease, and the incumbent to his own lease one year of his benefits to be divested by the ordinary among the poor of the parish. And all cessions or transferences out of any part of any rent, with any pension, or with any profit out of the same, other than to rents be referred upon leases according to this act, shall be void.

Sec. 6. Provided, that every person allowed to have a benefice, or to be beneficed one of them, upon which he shall not be most ordinably reformed, and that such benefice be not of a yearly rent, but such lease shall endure no longer than during such benefice's abstinence without abstinence above forty days in any year.

This act to continue to the end of the next parliament.

Made perpetual, 3 Car. I. cap. 4.

Stat. 14 Eliz. cap. 11. srm. 15. All bonds, contrac-
tes, 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 by bonds and covenants as shall be made for assurance only, shall be void, and shall not be made as such, but such lease shall endure no longer than during such tenant's abstinence without abstinence above forty days in any year.

Sec. 16. All leases, bonds, promises and covenants, warranting benefices and ecclesiastical livings with cure to be null and void, shall be of no other force than the same had been made by the beneficed person himself that demised the same to cure.

Sec. 17. The said branch of 13 Eliz. cap. 10. Shall or extend to any lease of houses situate in any market town, or so that house be not the dwelling house used by the beneficed person, or his heirs, and shall make any lease for the habitation of the persons, nor have ground to the use belonging above the said house.

Stat. 18 Eliz. cap. 6. srm. 1. No matter, provost, rector, dean, mayor, governor, rector or chief ruler of any college, cathedral church, hall or house of learning in the universities, nor any provost, warden or his head officer of the college of Winchester or Eton, or the corporation of the same, shall make any lease for rents or years of their lands, to which any assignable land, meadow or pasture, shall appertain, except in kind of the old rent to be retained in corn, viz. in whole wheat, after 6s. 8d. the quarter or under, and in wheat, the quarter or under, to be delivered early at the said colleges, &c. and for default thereof to pay to the said colleges, &c. in ready money.

Lease of a farm, let at rack-rent for seven years, with variety of good covenants.

This indenture made, &c. between W. B. of, &c. of the one part, and W. W. of, &c. of the other part, witnesseth, That the said W. B. for and in consideration of the yearly rent and covenants before after referred and contained, viz. that the said W. W. his executors and administrators, shall and may at any time by power of attorney or otherwise, cause to be paid, kept, done and performed, all duties and considerations, as aforesaid, and to farm letters, and to these presents due debts, grants and to farm lett unto the said W. W. All that messuage, tenement and farm, commonly called or known by the name of, &c. lying and being in the parish of, &c. in the said county
3
Lease and release. A conveyance by lease and release, is where he who conveys any lands or tenements first makes a lease (or bargain and sale) of the premises to the person to whom the lease is to be conveyed or for six months, a year, &c., but usually for a year, to let him that by virtue thereof the lessor may be in the usual possession of the premises granted by the lease, (or bargain and sale) and intended to be released to him; and then the lease (or bargain or sale) by virtue of the statute of the 27 Hen. 8. cap. 10. for transferring leases into possession, and inheritance of the said lands, to the use of himself and heirs for ever, &c. And then a release (usually the day next after the date of the lease, reciting he said lease, and declaring the leases) is accordingly made; which in this case is a conveyance of one's right thereby to the tenant (or lessee) that he has in a thing to another who has the said possession thereof. 1 Wend's Convey. 714.

A lease and release are but one conveyance, and in the course of one deed. 1 Med. 252.

Lease and release is now become the most common conveyance to a feoffment; for by the said statute the use is transferred into the possession, to last thereby the place of liberty of feisin is supplied; which deed faves much trouble, especially when the bar-

idor, &c. lives at a distance from the premises; in which case a letter of attorney to make liberty was neglige to be made, otherwise the bar-

idor, &c. was to keep feisin in person. 1 Will's Case, 715.

1. Things requisite in a lease, or bargain and sale for a

2. Things requisite in the release; and of setting aside a

3. Things requisite in a lease, or bargain and sale, for a

First, With respect to the consideration, it is requisite, and the usual and best way, to mention a consideration of money, as five shillings, or some other small sum, though it be never paid; for it was a question up

in a lease for a year made by the words demife, grant

up to him, rendering a pepper-corn rent, whether

or seacoal could operate upon it? And it was objected, as the release was void, because there was no entry

and, nor any consideration to raise an use, it being but pepper-corn, which is not sufficient, for it is to be paid at the profits of the land. Chief Justice North at the next term, said the consideration seemed to him not to be sufficient to raise an use, because the use must be raised out if the land, and united to it before a rent can reflux out if it. But Windham Justice was of opinion, that the consideration, though but a pepper-corn, would raise an

First, with respect to the consideration, a release will operate without a consideration, but it is convenient to put a valuable consideration in, as money, or love and affection, or some other thing, so it would make the land paid by way of

and the reasoner could make the reasoners for five of 1 El.

93. 36. a. 8 Co. 93. 94. a.

Thirdly, with respect to inrolment, there needs no in-rolment of a bargain and sale for years; that executes by the statute without it. 2 Co. 35. 36. a. 8 Co. 93. 2 Rowl. Abr. 204.

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where in conveyances the word does frequently occur.

Cowell, edit. 1757.

Lettur. The flape for leather, where to be held, 27 Ed. 4. feft. 2. c. 1.

It shall have no impositio without content of parliament, 45 Ed. 3. c. 4.

Ancient prohibitions of the execution of it, 27 Ed. 3. c. 2. c. 3. 37 Ed. 3. c. 6. Elv. c. 9.

1 Jac. 1. c. 22. feft. 54. 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 fanners are to convey leather from one part to another, 27 H. 8. c. 14. feft. 4.

Exportation of leather retanned, 2 & 3 Ed. 6. c. 9.

1 M. ft. 3. c. 8. 5 El. 8. & cap. 1. feft. 2. 24 El. 4. c. 18 El. 9. c. 9.

Leather may buy and fell tanned leather, 3 & 4 Ed. 6. c. 6.

Buying of raw hides to fall again untanned, prohibited, 3 & 4 Ed. 6. c. 9.

Artificers may buy tanned leather, 1 Mar. J. c. 3. 8. 1 El. c. 8. 9.

Leather shall be searched and sealed, 1 El. c. 9.

Felony to export leather or tallow, 1 El. c. 10. permitted by 22 Car. 2. c. 5.

Sheep skins tanned 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. 2.

None but tanners to fell unwrought leather, 27 El. c. 16.

How leather shall be wrought and curried, 1 Jac. 1. c. 22. 9 Ann. c. 11. feft. 10. 12 Geo. 2. c. 35. f. 7.

None but artificers may buy leather, 1 Jac. 1. c. 22. No person shall foresail hides, &c. 1 Jac. 1. c. 22. feft. 7.

Saving of the rights of the universities, 1 Jac. 1. c. 22. feft. 48.

A 24 ft. not to extend to Wales, 1 Jac. 1. c. 22. feft. 53.

This act not to extend to Scotch hides brought to Berwick, 1 Jac. 1. c. 2. feft. 56.

Letters patent contrary to this act void, 1 Jac. 1. c. 22. feft. 57.

No suffer for servants who have not been apprenticemen, 1 Jac. 1. c. 9. feft. 4.

Sheep skins need not be searched or sealed, 4 Jac. 1. c. 6. feft. 2.

Tanned leather shall not be fold by weights, 4 Jac. 1. c. 6. feft. 3.

Sheep skins and calves skins creased or undressed, and all manufactures of leather may be exported, 12 Car. 2. c. 4. feft. 10.

Leathers and hides of ox and calves not to be exported, 13 & 14 Car. 2. c. 7.

Leather shall be fold in open market only, 13 & 14 Car. 2. c. 7. feft. 4.

Exportation declared a public nuisance, 13 & 14 Car. 2. c. 7. feft. 11.

This act not to prohibit the carrying of hides for the necessary use of any ship, 13 & 14 Car. 2. c. 7. feft. 11.

General liberty to export leather, 20 Car. 2. c. 5.

1 Jac. 2. c. 13. 11 W. & M. c. 23. 9 Q. c. 6. feft. 4.

Leather curried shall be deemed made ware, 1 W. & M. c. 33.

Tanned leather may be fold by leatherfellers, &c. in theire shops, 1 W. & M. c. 33. feft. 5.

Duties
L E

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.

Leather to be marked on paying duty, 9 Ann. c. 11. sect. 44.

Forging the marks, death without clergy, ibid.

Commissioners or other officers not to influence elections, 9 Ann. c. 11. sect. 46.

Incurrence of the debtlock upon leather exported, 12 Geo. 1. c. 7. sect. 6.

Towed sheep skins to pay the smaller duty, 3 Geo. 1. c. 5. sect. 5.

Hides to be kept separate till surveyed, 5 Geo. 1. c. 7. sect. 10.

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 statute 1 Ann. 2, c. 18. extended to the manufactures of leather, 13 Geo. 2. c. 18.

Voyagers to perform the business they are engaged in, ibid. sect. 8.

Leccsum, A riotous debauched person, a lecher, a whore-matter. Scant, quod Ego Johannes confublauris infidem suis deviderit, moribus suis comminum lectorum & mercatorum sui Cfellerforae sancti libertis suis magistratu tenui de comet falvo min mihi & hæredibus mei. Since dat. fed circa annum 1220.

Cowell, ed. 1727. See Chantress.

Lecherity, A fine on adulterers and fornicators.

Lechery, A bed; sometimes all that belongs to bed. For. 1706. pag. 633.


Lecetum, In London and other cities there are lecherous persons, and many lecheries have likewise been founded by the donation of private persons, a Lady Mayor's at St. Paul's, and many others; and it seems generally that he bishop's power is only to judge as to the qualification and fitness of the person, and not as to the right of the lechery: As in the case of the churchwardens of St. Bartholomew's, M. 12. 12. one Fifhemen lett 25. 1. a year first to be consulted, and appointed, that the lecher must be chosen by the parishioners, and to preach on any day in every week as they should see fit. The parishioners fixed on Thursday, and chose a lecher every year; and now Mr. Turkson being lecher, and the parish having chosen Mr. Rainer, the other churchwardens not being of their choice, whereupon the churchwardens that Turkson out of the church. Afterwards the bishop of London determined in his favour, and granted in inhibition and motion for that parson. But by 5 Heli Chief Justice; a prohibition must go try to the right: It is true a man cannot be a lecher without a licence from the bishop or the churchwardens, but their power is only as to the qualification and fitness of the person, and not as to the right of the lechery; 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 not if they refuse to open it to any other. 3 Salk. 371. sect. 6.

But in case where there is no fixed lecher, or ancient salary, but the lechery is to be supported only by voluntary contributions, and there is not any custom concerning such ecclesiasten, it seems that the ordinary is the proper judge, whether or no any lecher be in such place of the church; And it appears: As in the case of the lecher of St. Ann's Wissington, T. 16. Geo. 2. the court of King's Bench, upon consideration, refused to grant a mandate to the bishop of London to grant licence to a lecher; who appeared to have no fixed salary, but to depend altogether upon voluntary contributions; and where there

was no cufom; and the rector had refused his leave to preach in the church to the parson now applying. Str. 17. 3.

By statute 13 & 14 Geo. 2. cap. 4. sect. 19. No person shall be allowed or received as a lecher, unless he be first approved and thereunto licensed by the archbishop of the province, or bishop of the diocese, or (in case the fee be void) by the guardian of the diocesania, under his seal, and shall, in the presence of the said archbishop or bishop, be sworn to read the thirty-nine articles, with his declaration of his unfledged affection to the same: And every parson who shall be appointed or received as a lecher, to preach upon any day of the week, in any church, chapel or place of publick worship, the first time he be preach (before his sermon) shall openly, publicly and solemnly declare his unfledged affection unto the said book, and to the use of all the prayers, euntings, and ceremonies, forms and orders therein contained, and shall, upon the first lechery day of every month afterwards, do as long as he shall preach there, at the place appointed for his said lechery or lecherous, before his said lechery or lecherous, openly and publicly and solemnly and freely read the common prayers and service appointed to be read for that time of the day, and then and there publicly and openly declare his affection unto and approbation of the said book, and to the use of all the prayers, to the end that every such person who shall neglect or refuse to do the same, shall from thenceforth be disabled to preach the said or any other lechery or lecherous, 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 service appointed by the said book, and conform in all points to the things preferred according to the purport and true intent of this act.

Self. 20. Provided, that if the said lechery be to be read in any cathedral or collegiate church or chapel, it shall be sufficient for the said lecher to say, or to be reduced to, and conform afforead to declare his affection and consent to all things contained in the said book, according to the form aforeaid.

Self. 21. And if any person who is by this act disabled, or prohibited, is before the common prayers and service in and by the said book appointed to be read for that time of the day, shall be openly and publicly and solemnly read by some priest or deacon, in the church, chapel or place of publick worship where the said lechery be preached, or be preached, as the lecher shall then to preach shall be present at the reading thereof.

Self. 23. And provided, that this act shall not extend to the university churches, when any lechery or lecherous to be preached, the common prayers and service in and by the said book appointed to be read for that time of the day, shall be openly and publicly and solemnly read by some priest or deacon, in the church, chapel or place of publick worship where the said lechery be preached, or be preached, as the lecher shall then to preach shall be present at the reading thereof.

Self. 25. And provided, that this act shall not extend to the university churches, when any lechery or lecherous to be preached, the common prayers and service in and by the said book appointed to be read for that time of the day, shall be so read without the authority of any bishop, dean, or chapter, or any person in any capacity or corporation within the same, upon certificate 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.

Self. 28. Provided, that at all times when any lechery or lecherous to be preached, the common prayers and service in and by the said book appointed to be read for that time of the day, shall be openly and publicly and solemnly read by some priest or deacon, in the church, chapel or place of publick worship where the said lechery be preached, or be preached, as the lecher shall then to preach shall be present at the reading thereof.

Self. 25. And provided, that this act shall not extend to the university churches, when any lechery or lecherous to be preached, the common prayers and service in and by the said book appointed to be read for that time of the day, shall be openly and publicly and solemnly read by some priest or deacon, in the church, chapel or place of publick worship where the said lechery be preached, or be preached, as the lecher shall then to preach shall be present at the reading thereof.

Lecum, (Lecum) The deek, the reading place, or pew in churches.—Tune major profytr rederat ad lecumum ineceputas quad incumbit, &t. Statuta Eccl. Paul. Lond. MS. fol. 4.

Lee, (Leea) The rising water, or increase of the sea. Du Frise.

Lett, Lea, vifus Franci plegi, Is otherwise called a law-day. Smith de Rep. Angl. liv. 2. cap. 18. and seems to have grown from the Saxon lea, which, as appears by

5 A
the law of King Edward, published by Lordland, num. 34; was 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 correction of that court, whereby you may refer to Story, Kitton, from the beginning of the book to the fifth chapter, and Bray, 28. But this court, in whose name a forest or beget, is accounted the King’s court, because the authority thereof originally belongs to the crown.

The hundred: have from the sheriff’s warrants, his charters, specially in injustice, Spottwood’s juridical, transference of all things, committed against the crown or dignity of the King, though it cannot punish man, but must certify them to the justices of affile, by the statute of 1 Ed. 3, cap. 8, ut what things are only inquirable, and what punishable, see Kitton in a charge of a court, let, from fl. 6, to fol. 20. See also the statute of 8, 2 and 4 hft. 261. Heretofore, curia felice illia, faith Spelman, quam inter Saxones ad Friesager, decennas tenentes pertinente litterat. The jurisdiction of bailli in within the dutchy of Normandy, in the counties of their provinces, seems to be the same, or nearly like our leet, cap. 4, of the Grand Curtalitamus. Let us come to this, sec. i. concura, arborium, or from Lat. Leet, affine. Quod in hac bali curia de domini afflictatur inter vicinos emuerentus, at petit in LL. Edw. Conf. cap. 10. See Sir William Dugdale’s Warwickshire, fol. 2.

A court-leet is a record of the court, having the same jurisdiction within some particular precinct, which the sheriff’s torn hath in the county. Finch 245. 2 Hock. P. C. 72.

The flat. Ed. 2, which shews of what things the sheriff’s torn and court-leet shall have cognizance, does not confine their jurisdiction to those things enumerated in the statute. Finch 261. Chan. Jus. 212.

A court-leet can be within two leets at the same time, and in the same respect; therefore, he who resides within the precincts of a leet, the lord thereof doth hold his court, cannot be compelled to come to a superiour leet, for any purpose which may as well be answered by his attendance at his own leet; but if a private leet be specified for two or three articles only, it seems that the inhabitants must attend the torn for all other matters; also a grand leet may prescribe to oblige a certain number of inhabitants in every town within its precinct, to appear at every such grand leet, to inquire of such offences as are specified by the statute. Also if a man be feized in the King’s hands, all who owed suite to it ought to come to the torn, &c. also the sheriff’s torn, as an overleer of the leet, is to inquire whether the tithing be full, and may inquire of the concealments of offences incipple in leets. 2 Hock. P. C. 73.

And several authorities have cited.

A court-leet shall be forfeited, not only by acts of gross injustice, but also by bare ommissions and negligences, especially if often repeated, and without excuse. 2 Hock. P. C. 73.

The caption of an indictment in a court leet, od av. self. Frank pl. curia leet, &c. is good, for the words curia leet shall be rejected, for it shall be intended that the indiciament was taken by the court, which alone hath the colour of authority to take it. 1 Salt. 193.

The not letting forth in the caption, whether the court was held by grant or preferment, is helped by the multitude of precedents, 1 Salt. 200.

Stewards of courts leet and courts baron, shall not take any profits or perquisites, 1 Ed. 1. 6. 5. See Dn. Amendment, Fine.

Leets or Leets, Measurers for the nomination of the electors for the W. is a word often used in archbishop Stillingfleet’s History of the Church of Scotland.

Leet & Leet. Anciently the allegy of money was so called. Dedita nummi complices quotemuetens legum & leetum (pro folio) appellabant. Synon.

Legalities. What is not intided as heriditary, but may be bequested by legacy in a last will and testament, confuted of in diversities, distribution & surin goods and debts in testamentary & adi tions, &c. but not of legacies, &c. with parte off legacies, &c. trans non—actions burlat in parliament, &c. Ex-Big. 2. With Walkinshyne, Arches. Ebor. MS.

Legate. (Legatus.) Is a particular thing given by a leet will and testament, and he to whom such legacy is given, is called the legatee. If a man transfer his whole estate or catt to another, that the Civilians call Ha- rens, we may suppose that it is to be transferred, they term Harens; but we call him heir only, to whom all a man’s land and heridements devolve 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 in which a trust is made, and the same devolves in the person of the executor, in those cases in which no executor is named. S. 2 Edw. 7. 271.

If a man covenants with J. S. to pay him 201. and afterwards by will he devolves him to 201. in discharge of the said covenant, this is not a legacy liable in the spiritual court, but remains fill a debt, recoverable at common law. 2 Leon. 115.

But if A. covenants with J. S. that he will pay 201. a-piece to B. C. and D. and afterwards he devolves him, a-piece 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 by a writ of sequestration, therefore B. C. and D. have no remedy, but by applying as legates. 2 Leon. 115. Davies and Pierce’s case.

A specifick legacy is a gift or bequest of a particular thing, such as the tellator’s horse, cow, &c. and differs from a pecuniary legacy, or a sum of money, in that the legacy is not to pay his debts, in case of deficiency of affes, to abate in proportion, as pecuniary legacies must do. 2 Chan. Ca. 25. 171. 1. Vern. 31. 2 Salt. 416.

So if a man devolves his personal estate at H. that is as much a specifick legacy, as if he had enumerated the several particulars of it; and tho’ the other legacies fall short, yet the legacy must be what it was intended to be. See Tomes. 28. 8. 28. Sayer v. Sayer. Preced. Chan. 392. S.C.

But if the tellator devolves his personal estate at A. and his personal estate at B. and then devolves 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 described.

2 Preced. 393. 4.

In these or a term of years, which is specifickally devised to another, be taken in execution by creditors on a judgment obtained, (as they may be) the specifick legate shall have recompence in equity against the executors, or rejudicial legates, for the value, who are to have nothing left after the debts and legacies are paid. 2 Preced. 393. 4.

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 tellator, and by the same devise a leet he had in farm to R. D. and there was no reason the affes were to be sold for payment of debts; afterwards, by decree of the court, the 401. was adjudged to be affes to pay debts, and was brought into court, there to remain for that purpose; the plaintiff proposed to have what remained of the 4000l. paid out of court to himself, and the defendant R. D. opposed it till he had first had a satisfaction out of it for the value of the leet farm devised to him, and paid for the payment of debts; the court held, that the devise of this fund money, was a specifick legacy, and therefore R. D. could not have but a proportionable part of the value of his fee's.
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 altering, revoking, and giving security for that purpose: and of residuary legacies and legatores.

1. What words shall be deemed sufficient to give a legacy.

Here we must observe, that allot' in grants and deeds of gift the law requires a form of words, yet in last wills and testaments, which are presumed to be made at the time when the testator is in his right, the law regards chiefly the intention of the testator, and therefore any form 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.

A private note, acquaint him with, and dies, without such appointment, this is said to be a good bequest to the party. 2 Chan. Ca. 158, Martin v. Clerk.

But it has been held, if A. gives all his goods, plate, and furniture at F. to A. his wife for life, and declares that he will, or that he will make a codicil, and makes A. residuary legatee of all other his personal estate, then makes two codicils, but takes no notice of the goods, plate, and furniture at F. and makes his wife his one of his executors, that the wife should not have the absolute interest in the goods, plate and furniture at F., but that it should be distributed after her death as an indissoluble interest, and she to have her widow's part thereof only. Paff. 1730. Divers v. Gibs, decreed.

If one devise his land for payment of his debts and legacies, and devises 400l. a-piece to two of his sisters, and to his three children, as such as his executor shall think fit; the third shall have 400l. 40s., and be made equal to the other sisters, if the estate will hold out. 2 Vern. 153.

Wortson v. Broom.

3. What shall be a sufficient description of the person to take, and of the thing given.

I forms agreed, that if a man devises legacies to all his children and grand-children, that this extends only to those who were in affection at the time when the will was made, for then the will speaks, and none born after are to be let in, unless they had future words in the will, to all his children or grand-children which should be born or be living at his death. Yor 177. Co. Lit. 112 b. Preced. Chan. 470.

If a man devise the surplus of his estate to his grand-children living at his death, grand-children born after his decease shall not take; for if he had so intended, he would have not restrained it to children living at his death. 2 Vern. 710. M'Gregor v. Paty.

If one devise the surplus of his personal estate to the children of A. and B. and neither of them has a child at the time of making the will, or the death of the testator, the devise is executory, and shall extend to any children that A. and B. shall afterwards have; and the children of each shall take per capita, and not per stirpes, they claiming in their own right, and not as representing their parents. 2 Vern. 105. Weld v. Bradbury.

If A. devise 1500l. in trust for the children of B. and B. has only one child, and several grand-children, the child only shall take, and the grand-children shall not come in for shares; but if B. had not a child living, the grand-children might have taken by the name of children. 2 Vern. 106.

If a legacy of 400l. is given to the eldest son of A., and B., says he, is his son, and the testator had not heard it, and that afterwords that it happens to be his father's executor, he is by these words freed from that debt, which his father owed the executor. Gedolph, 284.

If there be a devise of a personal thing to A. for life, breaching him at his death to give it to B. this amounts to devise of the life of it only to A. for life, remainder to B. 2 Vern. 450.

A. devises his land to B. in fee, paying 400l. whereof 100l. to be at the disposal of his wife, in and by her will and testament, to whom the flall think fit to live the same; these words vest an absolute interest in the wife, so that though the devise inter tenet, her administrator shall have the 400l. 2 Vern. 181. Relaton v. Dundas; in fee Hub. 9.

If a man gives legacies to his children, to be paid at twenty-one or marriage, and if any of them die before twenty-one or marriage, the legacy of such child to be paid, to such manner as his wife (who made executor) would think fit, and one of the children dies under age, and unmarried, the mother may appoint such legacy to my one of my other children, and it will be good. 2 Vern. 513. Thomas v. Thomas.

If A. has determined to be paid to J. S. by him to be disposed of in such manner as the testator should, by
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 willing to furnish with the reparation of the whole, 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 fee of his personal estate 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 retain the devise to the relations within the future of distributions. 2 Vern. 381. *Jones v. Bank.*

B. testator, a gentleman, dying in his 63rd year, it being a null and void established doctrine of the court of Chancery, to make the statute of distributions the rule and measure of such general devise; as where A. devised all his real and personal estate for the use of his relations, without specifying any in particular, and used any other words, and it was agreed to be the rule of the court, in the construction of such devises to relations, that those who by the statute of distributions would be intitled to the personal estate in case he had died intestate, should, upon such general devise, he let into the same proportions only; and my Lord Chancellor said, he thought it the best measure for setting bounds to such general devises, and it had been ordered and ruled accordingly in this court. Precd. Chan. 401. Reach v. Hammond.

As to the description of the thing given Godolphin says, that in order to find out the testator's meaning, with respect to the things he intended to give away, it is necessary chiefly to regard the time when the will is made, for it is a presumption at law that the testator's mind was not altered, unless it otherwise appear by sufficient evidence; therefore, says he, if a father bequeath to a son (who is a spendid) all his books, and afterwards buys other books, the books so bought pass not. Godolph. 272.

But if it there be both by our law and the Civil law a devise of all a man's personal estate which he did settle of, and not that only which he had at the time of making his will; for the personal estate being transferable and fleeting, and, from the necessity of desiring and trafficking, liable to daily alterations; if the contrary resolution should prevail, it would put men under the difficulty of making a new will every day, and create the greatest perplexity imaginable. Swinb. 418. 1 Salk. 237.

Alfo it hath been determined in Chancery, that if a man devises to his wife all his personal estate, at a place called E., in his personal estate, as coaches, horses, &c. then at the time of his death shall pass, though not then at the time of making the will, the personal estate being fluctuating and varying until the time of the testator's death. 2 Vern. 688.

But where a man devise to his niece all his goods, chattels, household stuff, furniture, and oher things which then were or afterwards in his house at the time of his death; and some time after died, leaving about 265 l. in ready money in the house; and it was decreed, that this ready money did not pass, for by the words other things, shall be intended things of like nature and species of things before mentioned. *Art. Eq. 261. Voit. fran. ch. 9.*

If a man devise his house, and all his goods and furniture therein, to his wife for life, and after her decease, to his son R. and his heirs, except his pictures, which he gives to his sons A. and B. and he has pictures in boxes, as well as those hung up in the house, and like pictures his death, which he had not at the time of making his will; and it is proved in the cause that he had skill in pictures, and frequently bought pictures, and fold them again; the exception of the pictures shall extend as well to the pictures hung up as furniture 252. So R. leave them as well in the house, at the time of the will, as to those bought in after the will made. 2 Vern. 538. Gayre v. Gayre.

3. If that 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 away the same by express revocation, which may be done by an express revocation thereof, or otherwise, secretly and by implication, as by giving away, or voluntarily alienating the thing devised. Translation of a legacy is the bequeathing 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, unless 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, unless 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 due, but not a greater quantity than was the first. Swinb. 522.

So if the testator bequeath a ship, and afterwards, by piece-meal, repairs and renews 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 legatee may take the new ship. 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 he 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 testator build another in the same place, the legacy is extinguished, unless 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 stuff remaining, the will of the testator is not hereby presumed to be changed; and therefore the legatee may recover the house so repaired for it is deemed to be the same house still in law. Swinb. 523.

So if the testator, being constrained by necessity, 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 just 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 extinguished; 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 person, and afterwards to another, the same thing is given to another per son, this is an ademption of the legacy as to the first person, and the utmost конфискаtion shall be presumed in the testator to the contrary appears; and therefore in this case the legacy is divided between them. Swinb. 528.

If a man bequeath a legacy in these words, viz. give to my niece A. 500 l. which my father B. hath leave in her hands of mine, as by bond appears; at after the money is paid in, and ten years after payment thereof the testator dies, yet the legacy is good though the security is altered; for by the words, more is intended but that the legacy should be as good as before. *Ropo. 335.*

So where a man devised in the following manner, viz. I give and devise to A. my good and only uncle, a sum of 500 l. that is to say, that bond and judgment he gave me for 400 l. and 100 l. in money, and
his wife executrix, and defins her to be kind and affifting to his uncle, that he might live as became a gentle- man, and the uncle some time after told an effeare, and with the money paid off 320l. and took up the bond, and had the judgment vacated, and gave a new bond for the remaining 80l. and some time after the testator died, and the uncle, having notice of this will, brought his executor suit for recovery of the sum, it being infinced, that this was a specific legacy of that particular bond and judgment, and they being cancelled and altered before the testator's death, was an ademption of the legacy as to so much; and besides, they urged, that this payment of the 320l. amounted to a release, to that particular bond. but it was infinced, that the diversity that was between the money voluntarily paid in by the person who owe it, and where the testator found for and recovers it, in the first case the legacy continues full good, because the money only comes home to the pertinent estate; but in the other case, the testator could use it, as if he intended that to be his own; and therefore would not leave it to the legatee to recover; and the justice of the uncle ought not to prevent the afflication of a nephew, and no alteration of his intention appeared. My Lord Keeper was clear of the same opinion, and decreed the 80l. to be delivered to the executor with the amount of the legacy to hold, all interest. Law, 302. Orme v. Smith. 2 Tern. 681. S. C.

One by will devolved thus: Item. I give and bequeath to my grand daughter Mary Ford (or the plaintiff) the sum of 40l. being part of a debt due and owing to me for rent from G. M. the allowing what charges shall be ex- ceeded, the remainder to be paid to my grandchildren A. and B. the rest and residue of what is due and owing to me from the said G. M., which is about 40l. to be equally divided between them, they allowing charges as aforesaid. After the testator received the whole debt owing from rent to G. M., and was for the interest of the legacy it was infinced that there was a difference between a specific and pecuniary legacy; and though the disporing of a specific legacy might be an ademption of it, yet this being a pecuniary legacy, the paying the money to the testator would be no loss of it. On the other side was infinced that upon the difference a voluntary and compulsory payment, though the debt was no ademption, yet the second was, and that the testator obliged G. M. to pay the money; but my Lord Chancellor was of opinion, not there was no foundation for the difference taken in the 40l. as between a volun- tary and compulsory payment, and that the testator had with an intent to secure the legacy at all events, and decreed the plaintiff the 40l. legacy. Abr. Ep. 302. Ford v. Fletting.

If a man bequeath 100l. to a man, and he in the same testament gives him 100l. without taking notice of the first 100l. as a debt, as in the Rolls, if it be shown to be the intention of the former, and all but one legacy, unless it appears that the testator intended him 200l. in all, S. T. 530.

A. devises to his younger son 750l. and afterwards bays him a cornet of horse's commissioun, and paid 50l. 50l. for it, if it was proved to intended this 50l. should be discounted out of the legacy, and that he would strike to much out of his will as soon as the ac- counts came from Londin to him, but died before they came, without altering his will; and it was held, that this money paid for the legacy should go in di- minution of the legacy, and then in payment of the legacy, to be for the benefit of the child. Proc. Chan. 285. Hiftins v. Hift- ins.

If A. by will devils 200l. to his daughter, and after- wards on her marriage gives her more than that sum, this is an extinguishment of the legacy. 2 Tern. 115.

The intention of the testator being the prevailing rule to go by in the construction of wills, it has been previ- ously established as doctrine, that whereas a perfon, 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 intened just before he is bountiful, and that his intent is to be regarded as the legatee's, and it is held, that the 200l. a-piece should be a satisfaction of the portion by the be- settlement. 2 Tern. 111. Blyet v. Blyet, cited to have been adjudged.

So where a man had prevailed on his wife to join in selling 7l. 10s. per annum of her jointure, and after 6l. 10s. per annum, 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, out of cer- tain lands; and this was held to be a satisfaction of the notes. 2 Tern. 498. Proc. Chan. 250. S. C. Briton v. Dayton.

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 co- venants that the husband shall have the estate 150l. cheaper than any other; afterwards he, by will, revokes the settlement, and gives the husband 1500l. and dies, the estate was held to be in satisfaction of the 1500l. secured by the settlement. Proc. Chan. 138. Bayley v. Jefferys.

So if A. by marriage articles, agrees to leave his wife 100l. and her jewel, &c. but it is declared, that no- withstanding that he is at liberty to do any thing 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 waive 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. 2 Tern. 555. Herne v. Herne.

So where a child, intituled by his father's marriage ar- ticles to a share of his personal estate, has a lega- cy given to him by the will of his father; and it was also intituled to a legacy, he must waive the benefit of the articles. 2 Tern. 553.

So where a freeman of London made his will, and de- vised legacies to his children more than their orphanage parts would amount to, without taking any notice what- soever of the cullom; and it was held by the Miller of the house and guild that these legacies should be a satisfaction of their orphanage shares, to which they were intituled by the cullom in the nature of a debt; and that the legacies should not come out of the testamentary or dead man's part, because it is held in this court, that they shall not take both by the will and the cullom too; but where such legacies are articles, the should not be debared of the inten- tion 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 like circum- stances, it was held to be a satisfaction, and not a satisfaction: And in all these cases the intention of the party ought to be the rule. 1 Tern. 586.

As if A. give a bond to B., her servant to pay her 20l. per annum, quarterly, for her life, free from taxes; and by will, without taking notice of the bond, gives 20l. per annum, for her life, payable half yearly, but not for
So where A. on his marriage covenanted to purchase and forfeit a jointure of 300l. per annum 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 had, and died before the appointment was made; but by his will he devised to his wife 330l. for life, with power to dispose of 30l. part thereof at her death; and it was held, 1st. That she had a right to 300l. and interest, and that the executor could not now be at liberty to settle 200l. per annum as the testator might have done. 2d. That the found money was, as an additional bounty and provision for his wife. 2 1orn. 505. Perry v. Perry.

4. Of vested or lawful legacies. It seems by the rule of the Civil law, and by the censes on this head, that if a legacy be devised to J. S. and he dies in the life-time of the testator, that the legacy is lapsed, there being no such person to take at the time when the will is to take effect. Abr. Ep. 256, 257.

So where A. by will, reciting that B. owned him 400l. and that he was to have 300l. per annum to him, provided he out of 400l. paid severally sums in the will mentioned to his wife and children, and the rest 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 charge the inmediate with the debt, or any part thereof, but to give such release or discharge, as B. his executors or administrators, should require or think fit; B. died in the life-time of the testator; and it was held, that the money directed to be paid the wife and children was well devised; but as to the residue devised to the debtor him self, that it was a lapsed legacy, he dying before it was paid; it was admitted, that if the testator had said, I forgive such a debt, or that my executor shall not demand it, or shall release it, that would have been a good discharge of the debt, tho' the debtor died in the life-time of the testator. 2 1orn. 521. Ellis v. Dunbar.

A. devised an estate to his wife, and after to the plaintiff, his niece, and her heirs, upon condition and to the intent that she pay 400l. to such persons, as his wife by her will in writing, or any other writing, shall direct and appoint, and dies; the wife after marries a second husband, and then makes a will, appoints the 400l. to be paid to her husband, his executors or administrators, and that when he shall have fully received the 400l. he shall 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 says, that she has published this her last will and testament in the presence of three witnesses; and the husband subterfued that he does not approve of this will; afterwards the husband dies before her, and makes her executrix of his will and residuary legatee; then B. and C. die, both intertestate, 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 then the question was, whether this appointment being made by will, and the appointee dying before the appointor, this should be in the nature of a legacy, and to the appointment void, the testatrix surviving the nominee; my Lord Keeper held, that if it was a thing purely testamentary, it would be plainly a lapsed legacy, but that in the case in the 400l. was not in his own nature testamentary, and yet they take as nominees, and it is but the execution of a trust; and decreed the money to be paid. 2 1orn. 2956. Barne v. Helgrave.

So where E. made her will, and devised in her words, I give unto my loving kinsman R. H. the sum of 300l. one half of the 100l. in which case, if the will had gone no farther, if one had died, it would have survived to the other; then the will, that comes after is only a revesture of it, in case they should both live to the time of payment, which they did not; and then the estate to
was usually one of the Pope's family, who was vested with the greatest authority in all ecclesiastical affairs over the whole kingdom, where he was first; and during the time of his legation, he might determine even those appeals which had been made from thence to Rome. Legatos natura had a more limited jurisdiction: to true, he was exempted from the authority of the legate a latere, in his own province. Cowell, edit. 1727.

Legatee, Is the person to whom a legacy is bequeathed by a last will.

Legats (Mentioned in flat. 27. Eliz. cap. 16.) The same with Legatary.

Legatium, In the ecclesiastical sense was a legacy given to the church or accustomed mortuary. Cowell, edit. 1727.

Legem facere, To make oath. Legem holare, To be capable of giving evidence upon oath. Legemmittere, To lose the privilege of being admitted as a legal evidence. Minor non habet legem, i.e. is not capable of testamentary foraging. See Mr. Sherlock's Notes on Hangham, pag. 132.

Legreevil, and Legreduit, (Legrehildum,) The fame with Lairevise. Cowell, edit. 1727.

Legitimus, Legitimus, and so subject to a course of law. Cowell, edit. 1727.

Legitimation, (Legitimation,) A making lawful, or legitimate.

Leips, A departure from service. Si quis a domino jure licentia declarat, ut leips emandatar & redire egat. Leg. H. i. c. 43.

Leontinum. See Limn. Leont. (Lemontium) A fett time of fasting and abstinence for forty days next before Easter, mentioned in the flat. 2 & 3 Ed. 6. 19. And first commanded to be observed in England by Ercambert Seventh King of Kent, before the year 800. See Vol. days and fasting days.

Lens and lease, (Lepte & lepte,) A custom in the manor of Writtle in Essex, that every cart that came over a part thereof called Greenbury (except it be the cart of a nobleman) pays 4d. to the lord of the manor. Cowell, edit. 1727.

Lepis, Is a measure which contained the third part of two bushels. Est catulis in histis Domini de unibus tertiarium partem unus mensura quae sancta lepis, quod est tertius pars dierum bussellorum, & valet quadraginta. De Cange. From hence we derive a feed lep. Cowell, edit. 1727.


Leopoldo amenosum, Is a writ that lies for a parish, to remove a party or a barter where that plaintiff himself to the company of his neighbours, either in church, or other publick meetings, to their annoyance or disturbance. Reg. Orig. fol. 267. F. N. B. f. 473.

Le Roy le Veint. By these words the Royal affent is signified by the clerk of the parliament to publick bills, which gives birth and life to them which before were but emblems; and to a private bill his assent is, Sei fatis commo il of defor.

Le Roy Cabiller. By these words to a bill presented to the King by his parliament, are understood his absolute denial of that bill, in a more civil way, and the bill thereby becomes wholly null.

Leeff, A leafs of greyhounds: The term is now re- nounced to the number three, but was formerly double, or perhaps indefinite. Cowell, edit. 1727.

Legregina, (Sax. legrega, i. e. bars minor.) Sitia sub quibus horum in mediocribus cumibus (quis Anglie helpedge, &c.) novi passengeres, &c. Dies eorum longius eam, qui curam & suis tum virodis tum viros viros faciat. Conitut. Caneti Regis de Forelle, Art. 2.

Leff, Is a legacy. Elenchiums quis nos mihi bimenes faciant de fit decidere, atque legessi de facta fundamentis. From hence we derive the word lefse. Monast. 1 tom. pag. 564.
LEX

Letters and Leet. The letter is the base that letters stands or remains to order for term of life, years at will. And he is whom the letter is made is the letter. 

Leetage. See Lallage.

Lettage, or Lette, or Lette, is a word used in Dunferm, to signify palat. and is still used in many places of England, and hence inferred in deeds and conveyances. Cowell, edd. 1727.

Lettre Jerusalem. The old duty of quadruplagum, or the customary oblations made on Millerton-Sunday, when the proper hymn was, "Lettre Jerusalem, &c. by the inhabitory church, to which old custom of precept and oblation at that time, was the beginning of that practice which is still retained among us, of offering or giving to that place on what post on Millerton-Sunday. But to return to these voluntary offerings on that Sunday, were by degrees fitted into an annual composition or pecuniary payment, charged on the parochial priest, who was preferred to receive from his people, and obliged to return them to the cathedral church; therefore in some forms of approbation, the subtle religion took expense care to throw this among other burdens upon the oppressed village. Was in the middle of the victory. Eredol, in the archdeacon of Huntingdon. This was in the year 1290. It is provided, qui guidem vicarum solvet sedula, littera Jerusalem, & literas, suffecta & alia omnima, lomeare competr in sancto, sinum, oblatas, & clericum docetum & his familia provent & reddihit. Ex Libro Conqueror de Sanctis Ollis, Sutton Ed., 1622, MS. Cowell, edd. 1727.

Letters. Where is it felony to lead letters without a name, or in a filibus one, fee 9 Gen. c. 22. under Black act.

Exorting money, &c. by threatening letters to be published by fine and imprisonment, or by pillory, whipping or transportation, see 2 Geo. c. 2. q. 3. 

Letters of obbligation, or obblatory letters, (literae oblatory) Were such in former times, when an abbot did release any of his brethren ab somni jubigatione & obblatione, &c. and made them capable of entering into some other order of religion. The form of issueing which you may see in 2. Exchequer. pag. 7.

Letter of attrimity. (litera attrimit) Is a writing authorizing an attorney, that is, a man appointed to do a lawful act in our stead. Whil. Symbol. part. 1. lib. 2. fol. 559. As a letter of attrimity to give relief of lands, to receive debts, to give, a third person, &c. See the flat. 7 Ric. 2. 13. See also 12. Ed. 1. edd. 1727. See Antlquinity.

Letter of clause (literae clause) Coze letters opposed to letters patent; those clause letters being commonly used up with the King's signet or privy seal, while the letters patent were left open, sealed with the broad seal.

Letters of exchange, (literae cambia, or litera cambii.) See Bills of exchange.

Letters of marriage. See Saraje and Raptital.

Letters of false conduit. See False conduit.

Letters patent, (literae patent) Are writings sealed with the Great seal of England, whereby a man is authorized to do or any thing that other wife of him, but not the other wife of him, felt bound to do, 16 H. 7. 7. And they are so termed from their form, because they are open with the seal affixed ready to be showed for confirmation of the authority given by them. Common persons may grant letters patent, F. N. B. fol. 35, but they are rather called patents than letters patent. Letters patents to make devouces, 31 Ed. 8. 18, yet for difference sake, those granted by the King are called Letters patent royal. 2 Ed. 6. 10. Letters patent conclude with teles me ipse, &c. Charters with his tribunal. 2 part. infl. 78. They are sometimes called also Letters covert. Ex telega regis et seul clausa man aum facit aulc, &c. See Letters covert. Liber. 23 Ed. 7. M. 24. Letters patent of summons of debt. Annis 9 H. 3. cap. 18. There is likewise a writ patent mentioned in F. N. B. fol. 1. &c.

Levant and contrant. When cattle have been so long in another man's ground, that they have lain down, and are rison again to feed, in the Levant the herds may, levantes & vultures. Cowell, edd. 1727. See Common.

Levant. Leavened bread. From the Lat. levare, to make light. Levantar crucem. To make law, or properly to call it into wind-tow, in order ad sullandum, to cock it up. — Hominis & Hesilngton vicum fuerat quid et dition (Acceum levantium & parallelum. Parthie. Ant. pag. 320. Hence non levatum font was one day's haymaking, a service paid the lord by inferior tenants, &c. Greyc—faciet aman arcanistiawm & mane Wstedrigham, & levantion lemmi, ch. p. 422.

Levite. A writ directed to the sheriff, for the levying a sum of money upon lands and tenements of him that hath forfeited a seisin. Reg. Orig. fol. 366, 326, and also F. N. B. 26. See Creation, Recognizance.

Levite fabius dama be difficilestuis, Is a writ directed to the sheriff, for the levying of damages where- in the difter hath formerly been condemned to the diffe- sive. Reg. Orig. fol. 214.

Levite fabius, the writ being declared quit, a writ directed to serve, for the levying the remnant of a debt upon lands and tenements, of chattels of the debtor, that hath in part satisfied before. Reg. Orig. fol. 269.

Levite facius, a writ concerning quit, Is a writ commanding the sheriff to feel the goods of the debtor which he hath already returned, that he could not fell them, and a much more of the doctor's goods as will satisfy the whole debt. Reg. Orig. fol. 350.


Lex, a term of ground, as much as a mi- centum. De beata. &c. continent non omni locutan- titudine & dimidium in legibus. Monast. 1. tor. p. 768. And it so seems to be used in a charter of H. from the Conqueror to Battle Abbey. Cowell, edd. 1727.

Levity, is a few, or even upon the earth. Cowe edit. 1727.

Levy, (leva) Signifies to gather or exact, as to h money; And is sometimes used to erect or set up; as levy a mill. Kitchin, fol. 185. Alis to raise or call up to levy a ditch. Old Nat. Hist. fol. 110. And to a fine, with or without the usual term: And accidently, a fine of a fine was made of. Cowell, edd. 1727.

Levynesse, is punishable not only with fine and imprisonment, but also with such infamous punishment to the court in disregard thall serv propem. 1 Hanc. C. 165. and Memb. 16 Cor. 2. A person was indicted for open leprosy, having his son and other inferiors, and was fined 200 marks, imprisoned for a week, and bound to the good behaviour for three years. 1 Sid. 168. See Hoofter Baldor, Badow hye.

Let, is often taken for judicium Divi. 'Tis the far as ludo amongst the Saxon, which is either an cannon or vulgar term. In Leg. H. cap. 62. Ab adsu Dominii afge ad extimus Epphanus non edita tempora. o facendi.

Lee amilla, or leum amittat, vix. One who is infamous, perjured or outlawed person. In Braden, 4. cap. 19. par. 2. Nor all uttera dignis leges. Lee apostolas, or Legum apostolata, is to do thing contrary to law. 'Tis mentioned in Leg. H. cap. 12. Qui legum apostolatit vix eat fuerat rex priv. vice.

Lee Baccus. The Braban law, was a law peculiar to Ireland, overthrown by King John in the twelfth ye- ar, and the English laws fitted instead thereof. See Baczang. 


Lee ocratita. (Rhetusiarum.) Is the proof of a thing which one doutes to be done by him, and his verity affirms it; detecting and confounding the afferent of
of his adversary, and flewing it to be without and against reason or proportion. Const. edit. 1772.

2. Brett, 1. p. 96, 97. For Petricus, this is called "Judicium Lege," 1. cap. 9, 42, 47.


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 defers to appear agreeable in life, and must be highly provoked by such ridiculous representations of him, as tend to leken him in the esteem of the world, and take away his reputation, which to some men is more dear than life itself; so it hath been held, that not only charges of a flagrant nature, and which reflect a moral turpitude on the party, are libellous, but also such as set him in a scurrilous ignominious light; for these equally create ill blood, and provoke the parties to acts of revenge and breaches of the peace. 5 Co. 125. 1. 48. 2. 99. 1. 57. 8. 7. 1. 5. 3. 37.

In fact, he has been held, that words, though not scandalous in themselves, yet if published in writing, and tending in a degree to the discredit of a man, are libellous, whether such words defame a private person only, or persons employed in a publick capacity. In which 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 publick affairs, as all who are libelled, for writing or printing the party's words, are immediately concerned in it to add to their revenge; and do have a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition. Hard. 470. 579. 3. Co. 125. 1. 48. 2. 99. 1. 57. 8. 7. 1. 5. 3. 37.

3. Who shall be deemed the author or compiler of a libel; who the publisher; and how the offenders shall be punished.

As every species and degree of calumny and detraction of this kind are deemed odious in the eye of the law, and are punished according to the nature of the charge.
of the law, and punishable either by civil action or criminal prosecution in most cases, at the election of the party injured; yet 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 one of dangerous conseqequence to, and destructive of the peace of the nation, always exercises a discretionary power to grant to the party injured, in order to prevent the perpetration 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; so where the matter complained of as a libel happens to be true; so where the granting the information is unessential for the purpose of the learned judge, as where the matter complained of was intended for reformation, not defamation. 3 Bac. A. 492.

So where a man advertises in a publick news-paper, that his wife had eloped from him, and cautioned all persons from truffing 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. A. 492. The King v. Enci, 5 Geo. 2. in B. R.

So where it was advertised in one of the daily papers, that Lady Mordington kept an assembly in Menfield, and it being counter-Advertising by calling her self Lady Mordington was an impoftrix, and that there was no such person except his wife, who always lived with him; the court refused to grant an information; for though she be called an impoftrix, yet that relates to ascribing the title of Lady Mordington, and what is an alleged opinion or information, is not a matter of which the court dealt in, where the matter complained of was intended for reformation, not defamation. 3 Bac. A. 492.

A writing was directed to general Wills, and the four principal officers of the guards, to be prefented to his Majesty for redress; the paper was not delivered, the man who delivered the guard at Whitehall with fire and candle, for which the government owed him 350l, 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, the paper paid to Carr, who refused paying it to the defendant; and the question was. if an information should be granted; and the court held it no libel, but a representation of an injury, drawn up in a proper way for redrefs, without any intention to asperse the proctor; and tho' there be a fuggelion of a fraud, yet this is no more than is in very bill in Chancery, which was never held libellous, if relative to the subject-matter. 3 Bac. A. 492. The King v. Bay ley, Hill. 8 Geo. 2. in B. R.

Here it may be proper to infert the remarkable cafe of parfon Pritch, who in a fennion received a ftrily from Mr. Martinjby, that one Greenough, being a political perfon, and a great perfoncr, had great plagues inflicted on him, and was killed by the hand of God; whereas in truth he was never fo plagued, and was himfelf refentent at that fenwnon; and he thereupon brought his action upon the cafe, for calling him a perjured perfon; and the defendant pleaded Not guilty; and the matte was difpoft upon the evidence, Try, Ch. Jul, delivered the law to the jury, that it being delivered as a libel, and not with any malice or intention to flander any perfon, he was not guilty of the words maliciously, and so was found Not guilty. Geo. 1. 60, 91.

The certainty requisite in the matter and application of a libel, it seems to be now agreed, that not only scandal exposed in an open and direct manner, but also such as is expressed in allegory and irony amounts to a libel, and that the judges are to understand it in the same manner as others do, without any fnell and sudden importation 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 hypocrife; and fo goes on, in a strain of ridicule, to intimate that the writer was owing to his vanity or; where a writing, pretending to reciti-
2. Whether proceedings in a court of justice will make the complaint amount to a libel; for it would be a great discouragement to ulcers to subject them to public prosecution, to bring an action to a court of law and to charge the mention of the law in prohibiting persons to revenge themselves by libels, or any other private manner, is to estrain them from endeavouring to make themselves their own judge, and oblige them to refer the decision of their grievance to a court of justice to determine them. Dyer 235. 2 Inst. 228. P. 117. 3 Bull. 269. 3 Blash. 340. Palm. 145. 188. 1 Fent. 23.

2 Haw. P. C. 194.

Therefore it has been resolved, that no fable or scandalous matter contained in a petition to a committee of a Legislature, or in articles of the peace of a court of peace, are libellous. 1 Lev. 240. 1 Sid. 414. 2 Ed. 832. 4 Cr. 14. 1 Haw. P. C. 194.

Also it is held, that no prejentment of a grand jury an be a libel, not only because persons who are suspected to be returned without their own seeking, and are tried not is said by Mr. Haws ton, that if it shall manifestly appear to be otherwise, the court shall be prejumtive of lesser evidence for what they do, but also because i t would be of his utmost ill consequence any way to discourage them from making inquiries with that freedom and readiness which the public good requires. More 627. 1 Haw. P. C. 194.

And it is held by some, that no want of jurisdiction on the 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 his counsel; but herein is said by Mr. Haws ton, that if it shall manifestly appear to be otherwise, the court shall be prejumtive of lesser evidence for what they do, but also because i t would be of his utmost ill consequence any way to discourage them from making inquiries with that freedom and readiness which the public good requires. More 627. 1 Haw. P. C. 194.

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The writ of a libel in the presence of another is a guilty pretence. It is a libel committed with or without malice, amounts not to a publication of it. 9 C. 59. Mar 813. 1 Hawk. P. C. 156.

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 the Batches making a new libel out of the old end not to be endured, and the injury to the reputation of the party is grievous, without any leeway by the merriment of him who makes so light of it. Mor 627. 1 Hawk. P. C. 156.

But it seems to be agreed, if he who hath either read a libel himself, or hath heard it by another, do afterwards maliciously repeat or repeat any part of it in the presence of others, or lend or lefe it to another, he is guilty of an unlawful publication of it. Mor 813. 9 C. 59. 1 Hawk. P. C. 155.

It is held by Lord Coke in the case of De libelli ficti; partly, that have been resolved, that if one finds a libel, (he would know himself out of danger) if it be composed 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 the examining and industry the author may be found out and punished. 5 C. 135.

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 such a letter, without other publication, is an offence of a publick nature, and the party damnish as much as it tends to create ill blood, and causes a disturbance of the public peace; and if the bare making of a libel be an offence, whether it be published or not, as it seemeth to be holden, solely the finding of it, or the rebellion must be a much greater offence. 4 Noy. 180. 3 Noy. 174. 12 C. 34. Poph. 136. Raym. 201. 1 Lev. 139. 1 Keb. 931. 1 Mf. 58. Sln. 123-4.

And on this foundation the court of King's Bench granted an information against a person for finding an abusive letter to Mr. Boteler's wife, wherein he calleth her rafcal and foul; although he wrought that he wrote this to the party himself, and never made it publick, being only a piece of private retenment; but the court held, that this method provoked persons to dwelling, that the writing and finding was a good publication; and that the intent of the party shall not be explained by himself. 3 Dab. Abp. 497. The King v. Philbrugh. Mitch. 5 G. 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 persons except the members of parliament, he may be punished as the publick are, and a number of a libel, in respect of such differing thereof among those who have the thing to do with it. 1 Sand. 133. 1 Lev. 240. 1 Sln. 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 complained of, if it were made for any other purpose than as a complaint in a course 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 proceedings in parliament, whereas the King's courts will take judicial notice. 1 Hawk. P. C. 156. 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 information 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. 6 Co. Cas. 175.

It is said, that in the 19 of James the 2d, 10 Vint. Ab. tit. Libel, and 11 Vint. Ab. tit. Libel, &c. and of the Laws of the Commonalty, &c. Libett, A feverly or delivery of so much grubs or corn to a customary tenant, who cuts down or prepares the fight grubs or corn, and receives some part or small portion of the same, or any cyruit or gravity. Cowell, ed. 1727.

Liberta, A free boat. Cowell, ed. 1727.

Liberta charta habenda, Is a writ judicial, granted to a man for a free chafe belonging to his manor, after he has by a jury proved it to belong to him. Cowell, ed. 1727.

Regulor of Writing judicial, fol. 26 & 37.

Liberta charta libertate sua praebenda, (which being granted to one, he hath a property in the fifth, &c. 1337. Lib. tartus, A free bull. Cowell, ed. 1727.

Liberta mara. See Liberta.

Libra, Is a writ sluing out of the Chancery to the Treasurer, Chamberlain, or Barons of the Exchequer, of Archbishops, &c. for the payment of any annual pernon, or other sums granted under the Great seal. See Brice, tit. Taxy d'Exchequer, num. 4. Reg. Orig. fol. 133. and sometimes to the sheriff, &c. Nat. Brev. fol. 132. for the delivery of any lands or goods granted under the Great seal of. See also, for the delivery of a prisoner, that hath been for a bail for his appearance. Lank. Eirenarch. lib. 3. cap. 2.

Libratus, Whatever money, meat, drink or clothes, is yearly, or at any fit times in the year, given by the lord to his burgesses. Cowell, ed. 1727.

Libertas ecclesiastica, This is an old frequent 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 right the only thing challenged by the clergy, as their Ecclesiastica. But by degrees, under weak princes are prevailing factions, under the title of church liberty, the contented for a freedom of their persons and publications 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. D. 1258. an at London, A. D. 1265. &c. Cowell, ed. 1727.

Libertate prolata, Is a writ whereby any such as were challenged for slaves, and offered to have delivered 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 as a pledge to challenge them. E N B. fol. 77. Villenage, and the appendices thereof, utr. in infranchisement, &c. Writs De vectig. De venenda, Libera probanda, were of old great titles in the books, but now antiquated. See Mortu obtendo.

Libratusiutribus, Is a writ that lies for a citizen, or burgess of any city or borough, that contrary to the liberties of the city or town wherein he is, is implied before the King's justices, or other officers, or judges of the forest, &c. to have his privilege allowed. Reg. Orig. fol. 622. P. N. B. fol. 249.

Libratus cujusdiem in tuncere, Is a writ where by he is given liberty to see any judges in opr 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 of the United kingdom of the five parts, and all ports shall have all their liberties and immunities. Magna Charta, 9 Hen. 3. cap. 29. No freeman shall be taken or imprisoned, or be imprisoned, or be outlawed, banished or other wise destroyed; nor shall the King's lands or fend upon the person of the judge his plea, or by the law of the land. The King shall fail his officers, or being delay to none, right or justice. See afterwards 2 Ed. 3. fl. 5. cap. 4. and 42 Ed. 3. cap. 3.
Stat. Maritb. 52 Hen. 3. cap. 22. None may disfrain his freeholders to answer for their freethold, or of any thing thereunto appertaining, nor make them swear against their will, without the King's command.

Stat. Conf. Chart. 25 Ed. 1. cap. 1. If any judge, or any minister of great charters, shall be undone and holden for none.

Stat. Conf. Chart. 25 Ed. 1. cap. 3. The same charters shall be sent under seal to cathedral churches, and shall be read before the people two times by the year.

Stat. Conf. Chart. 25 Ed. 1. cap. 4. All archbishops and bishops shall be summoned by the Common Council against those that by word, deed, or council, do contrary to the said charters, or that in any point break them; and the said curles shall be twice a year denounced; and if the prelates be removed in the denomination of the sentences, the archbishops and bishops shall deliver to the execution of the business their letters of command. See Crummunication.

Stat. Conf. Chart. 25 Ed. 1. cap. 5. The aids and aids which the people have given of their own good will shall not be drawn into customs.

Stat. Conf. Chart. 25 Ed. 1. cap. 6. The King shall not take freeholds but by the common alibrations of the realm, and for the common profit thereof, saving he ancient aids and privies.

Artic. jpsur Chart. 28 Ed. 1. stat. 3. cap. 1. The great charter of liberties, and the charter of the forfeit, shall be delivered to every sheriff to be read four times in the year in each county, and the sheriff shall take an account to the next county after the feast of St. Michael, and the next after Christmas, and at the next after Easter, and the next after the feast of St. John; and there shall be chosen in every three court by the commonalty three substantial men, knights or other, who shall be justices sworn and attainted as shall be attainted of all trifles done contrary to the charters (where no remedy was by the Common law), y imprisonment, or by ransom or amercement; nevertheles the knights shall not hold pleas where there hath been remedy provided after the course of the Common law; and the same knighl shall have power to punish all such as shall be attainted of all trifles done contrary to the charters (where no remedy was by the Common law), or to the charters appertaining; and if all these cannot attend to do their office, two of them shall it; and the King's thirles and bailiffs shall be attendant to do the commandments of the said justices.

Stat. de Tollege. non usquecund. 34 Ed. 1. stat. 4. cap. 1. All archbishops and bishops shall take without the alibrations of archbishops, bishops, ears, barons, knights, burgesses, and other freemen of the land.

Stat. 34 Ed. 1. stat. 4. cap. 4. Clerks and laymen shall have their lands, liberties and free customs, as they have used to have the same at anytime when they had them left; and if any fluates have been made, or any customs brought in, contrary to them, such statutes and customs shall be void.

Stat. 34 Ed. 1. stat. 4. cap. 6. All archbishops and bishops for ever shall read this charter in their cathedral churches twice in the year, to the great profit of their parishes churches, and the same shall be sworn into the common charters, and all those that willingly procure to be done any thing contrary to this charter.

Stat. 1 Ed. 3. stat. 2. cap. 9. Cities, boroughs and franchised towns, shall enjoy their franchises, customs and usages.

Stat. 3 Ed. 3. cap. 8. It shall not be commanded by the Great seal or the Little seal, to disturb or delay common right; and th'o' such commandments come, the justices shall not cease to do right.

Stat. 5 Ed. 3. cap. 9. No man shall be attached by any accusation, nor forfeigned of life or limb, nor shall he be held to answer for any land, against the great charter and the law of the land.

Stat. 14 Ed. 3. stat. 1. cap. 1. Holy church shall have her liberties in quietness, and the city of London, and all other cities and boroughs, shall have all their franchises and customs which they have reasonably used in their past.

Stat. 14 Ed. 3. stat. 2. cap. 1. The facility given to the King shall not be had in example, nor shall the prelates, earls, barons and commons, citizens, burgesses and merchants, be charged to make any aid, if it be not by the common affect of the great men and commons in parliament.

Stat. 14 Ed. 3. stat. 5. The realm of England shall not be put in subjection of the King, his heirs or successors, as Kings of Scots.

Stat. 25 Ed. 3. stat. 5. cap. 4. None shall be taken by petition or sequestration made to the King or his council, unless it be by indemnification 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 freethold, unless it be done in accordance to writ, and forejudged by course of law, and if any thing 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, not imprisoned, nor dispossessed, 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 pretenement before judges, 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 void in law, and held for void and sentence.

Stat. 1 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. 2. cap. 10. Letters of the signet or privy seal shall not be lent in prejudice of the realm or diminution 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 freedom, nor any other thing real or personal, which belongs to the King's and the law; and if any find himself grieved contrary to this ordinance, he shall sue 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 20L to the King.

Stat. 2 Hen. 4. cap. 3. If any man shall call, have 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 openly and without any colour, as shall be done in his courts; and the said justices, with all the other and other persons, shall not be bound to go to the King's courts, nor to answer before any other judge, or shall not he compelled to give any thing, or in any manner whatsoever, or otherwise deceived concerning the same, or for refusal thereof, and no Freeman shall be imprisoned or detained, without cause shown, to which he may make answer according to law, and the people shall not be burdened, to suffer forders and Your marks to injourn in their houses against their wills; and no commandments shall lie, to proceed within the land according to martial law.

Stat. 11. The late proceedings in the premisses shall not be drawn into confederacy; 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 Cor. 1. cap. 10. The court called the Star-Chamber shall be divolved, and neither the Lord Chancellor, Lord Treasurer, Keeper of the Privy seal, or President of the Council, nor any Bishop, Temporal Lord, Privy Councilor or Judge, shall have power to try any matter in the Star-Chamber, 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 courts before the President and council in the Northern parts, and also in the court of the dutchy 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 what lands or goods of any subject 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 Councillor, Judge or Justice, shall offend contrary to this law, they shall forfeit 500l. by 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 recovery shall be obtained, shall himself, in the same, be shall forfeit 1000l. 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 take any gift or disposition of his lands or goods, or to take any gift or legacy to his own use.

Sect. 7. Every person to 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 counsel, 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 habeas corpus directed generally unto all and every person, gaoler, minister, officer or other person, in whose custody the party shall be, and the sheriff or other person shall at the return of the writ (upon due notice given, at the time when such writ shall return) are to be brought before the judges of the court, and shall be thereupon questions 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 detainer, and thereupon the court, within three court days after such return made, shall proceed to determine whether the cause of commitment be just, and shall thereupon do what is justice shall appear. And if any thing shall be wholly done or omitted by any judge, officer, &c. contrary to the direction herein, such person offending, shall be severely dealt with the 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 held 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 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. Any person may be indicted for any offence against this act, unless he be impeached within two years after the offence committed.

Sect. 11. Will. & Mar. ft. 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 1688, 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 dispensing with 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 abused and exercised of late, is illegal;

That the commission for erecting the late court of commissiiners 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 subject to petition the King, and all commitments and prosecutions for such petitioning are illegal;

That by keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law;

That the subject 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 executive bail ought not to be required, nor ex necessitate fines imposed, nor cruel and unusual punishment inflicted;

That jurors ought to be duly impanelled and returns and jurors which pass upon men in trials for high treason ought to be freeholders;

That all grants and promises of fines and forfeitures; particular pardons before conviction, are illegal and void;

And for relics of all grievances, and for the amen dment, strengthening and preserving of the laws, parlia ments ought to be held frequently;

And they do claim, demand and insist upon all singular the privilege of the undoubted rights and liberties of this kingdom, and so shall bechemed, allowed, and by law ed and taken to be; and all the particular 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 statute shall be allowed, except a dispensation be allowed of such statute; and in such cases shall be specially provided for during this session of parliament.

Sect. 13. No charter granted before the 23d of October 1689, shall be invalid by this act, but shall remain of the same force as if this act had never been made.

Sect. 14. This act shall be in force on the 1st of February 1689.
obliged to engage in any was 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
shall take effect, no person born out of the kingdoms of England, Scotland or Ireland, or the dominions thereunto belonging, although he be naturalized or made a denizen, (except such as are born of English parents) shall be capable to be of the privy council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the crown, or to any other in trust for him. 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 after the said limitation shall take effect, judges commissioners shall be made quantum fide bonis jure, and their salaries ascertained and established; but upon the adduction of both houses of parliament, it may be lawful to remove them.

That no pardon under the Great seal of England be pleaded to an impleachment in the commons in parliament.

Sel. 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 observe the same, and that the laws and statutes of this realm for securing the established religion, and the rights and liberties of the people, and all other laws and statutes now in force, are by his Majestie, with his advice and consent of the lords spiritual and temporal, confirmed and confirmed. See Habac. 2, 4, Jer. 23, 6, Ps. 82, 15, 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 is a general signification, it is said to be a power or a doing as one thinks fit, unless restrained by the law of the land: And it is well observed that human nature is very an advocate for liberty; it being the gift of God to man in his creation, and therefore everything is deoffous to it, as a fort of substiution to its primitive state. Fer. fe 96. It is upon that account the laws of England in their favours 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 public.

Litt. Abr. 169.

Liberal. The manner of bewitching any one, or sometimes this taken for a barbarous barbarise. Leg. fam. 6. Gow. edit. 1727.

Libro aetatis penfatae et ad numerum: A phrase which often occurs in the Donemellv-Regislaw, and some others of that time and the next age, as Adilbury in Buckinghamshire, the King's manor.---In totis valentia reditiv libri arias & penfatae, & de bello x libri. In the old value it pays fifty-fix pounds burnt and weighed; and for toll ten pounds by sale. For they sometimes took their money ad numerum et a tale 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 purfified from the lead, and too great sally; for which purpose they had in both times always a fire ready in the Exchequer to burn the money, and then weigh it. Gow. 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, towns and noble houses had and bestowed millions of pounds, and therefore though the pound confiited of 20 s. they weighed it. Thus in Domesday we read, Reddib was 30 libras arias & penfata. Galle's Hist. of Brit. vol. 761.

Libraries. Cotton library settled in the family for the use of the public, 12 & 13 Will. 3. c. 5. Veiled in the crown, 5 Ann. c. 30. Directions for the preferre

L. I. E

Libra terre. Contains four ooxagon, and every ooxagon 13 acres. Secs. verb. Bevata terre, with us it is so much land as is yearly worth 20 s. for in Henry the Third's time, he that had guaducem libras terre was to receive the same of knightshood. See Fardin. Some are of opinion, that as money is divided into pounds, shillings, pence, half-pence and farthings, the same degrees are to be observed in the division of lands; and therefore as quinquies signifies a farting, so punder- teria is the fourth part of an acre, elyba is half and de- naria is a whole acre, foliata is six acres, and libra is twenty times twelve acres, i.e. two hundred and forty. Selmans is of another opinion, who comparies 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 pences, which they divide into halfs and quarters, so that an acre contains three hundred and sixty denaries; but some say, that libra terre is so much ground as is worth yearly 20 s. of current money. Gow. edit. 1727.

Licence. See Authorizy, Grant, and 15 Vin. 4th. Licen.

Licence to advise. (Licentia judicandi.) Is a liberty given by the court to a tenant that is effonned de malo loci, in a real action: For the law is, 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 thereunto appointed, and have a day adjourned him to prigdy: And the reason of this is, that it may appear whether he caused himself to be effonned 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 effonned, and to have made default. Of this, see Brit. edit. 5, trad. 1. c. 24. 2. and Fleta, lib. 6. c. 10, and Home's Mirror of Jusitiae, lib. 2. cap. Des Effonium.

Licence to go to election. Licentia eligendi, Regis, fol. 204. See Tonge v'Cullur.

Lincents. See Nichoules, Bandye, Forstallings, Gnawlers, Lecturer, Marriage, Simes, and Sumpels.

Licentia concordandi. See King's silver.

Licentia iuris gentium. Is the writ whereby the tenant effonned de malo loci, obtained liberty to ride.

Licentia transfrandita. Is a writ or warrant directed to the keeper of the port of Dover, &c. willing them to let some pafs quietly beyond sea, who have formerly obtained the King's licence thereunto. Reg. Orig. fol. 193.

Libfod law. Is a proverbial speech, intending as much as to hang men shrill, and judge them afterwards. Gow. edit. 1727.

Liggis, (Ligis.) A word borrowed from the French, and hath two several significations in the Common Law, sometimes being used for ligis lord, as 34 & 35 Hen. 8. cap. 1, and 25 Hen. 8. cap. 3, and sometimes for lige, mac, as 10 Rich. 2. c. 11 and Rich. 2. c. 1. Lige lord is that acknowledgment on superior. Daurans in commendator, de conditae, sodanorum, cap. 4. num. 2. Lige man is he that oweth allegiance to his ligis lord. Sklow de vicksa signif. verb, Liggania, faith, that it is derived from the Italian word ligga, a bond or obligation, in whom read more of this matter. See 8 H. 6. cap. 10. 14 H. 8. cap. 2. Liggis and Liggis-people. (Ligis.) The King's subject, 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 liggis. Gow. edit. 1727.

Liggis, (For.) Is a word used in the law of two significations: personal lien, such as a bond, covenant or contrast; and real lien, a judgment, flactus, recognizance, which oblige and affect the land. Tana de b., See 15 Vin. 4th, cap. 699.

Liggis, in kind or in place of another thing. Lit. Dict. And when one thing doth come in the place of another.
it shall be of the fame nature as that; as in case of an exchange, &c. 2 Sh. Rep. 359.

Licto rums. In law proceedings, signifies a caffle, manor, or other notorious place, well known and generally taken notice of by those that dwell about it. 2 L. & F., 12. Wherefore facing, a jury to appear, may be from lien counsel; and a fine or recovery of lands in a lien crown, is good; but it is said in a sc. fs. to have execution of such fine, the vill or parish must be named. 2 G. 574. 2 Ad. Rep. 48, 49. See 13 Tn. Abir. 357, 28. 18 Tn. Abir. 1205.

Lientenant, (Lieutenant.) Is compounded of lien, and tenor, and signifies that he occupieth the King's or any other person's place, or representeth his person, as the Lieutenant of Ireland, 4 H. 4. 6. So also it is used 2 & 3 Ed. 6. cap. 2. whence that officer seems to take his origin, as a Lieutenant of. Lieutenant of the Owcr, Seems to have been an officer under the constable. Cassell, ed. 1727.

Lititium, (Molitæ adulteriorum. Fltsa, lib. 1. cap. 7.) Is used for a liberty, whereby a land challengeth the penalty of one that lieth unlawfully with his bond-woman. Cassell, ed. 1727.

Litis vet, Union and co-operation of soul with body; enjoyment or possession of terrestrial existence. Jaffob. The life of every man is under the protection of the law, Wad's Inf. 11. A leafe made to a person during life, is determinable by a civil death; but if it be to hold during natural life, or for life in the hands of a minor, shall not be accounted as dead, but he shall put his life in jeopardy again for the same offence. Br. Appeal, pl. 12.

Life estates. Stat. 19 Car. 2. cap. 6. sect. 2. If such perons, for whose life any eftates be granted, shall abandon themselves seven years, and no proof made of the lives of such persons, an action commenced for recovery of such tenements by the lessors or reversioners, the persons, upon whose lives such eftates depended, shall be accounted as dead; and the judges shall direct the jury to give their verdict, as if the peron abandoning himself were dead.

5. In any such action wherein the life or death of any such peron shall come in question between the reversioner and the tenant in possession, it shall be lawful for the reversioner to take exception to any of the jurors, that the greatest part of the real eftate of such jurors is held by lease or copy for lives.

Stat. 5. If any person shall be evicted out of any lands by virtue of this act, and afterwards such person upon whose life such eftates 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 lessee may re-enter and enjoy the lands in his former eftate 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. 2. sect. 12. Any eftate pur autre vie shall be devicable by will in writing, signed by the party, or by some other peron in his presence and by his express directions, and shall 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 reafon of a special occupancy, as affets by deponent; and in case there be no special occupant, it shall go to the executors, and be affets in their hands.

Stat. 6 Ann. cap. 18. sect. 1. Any peron who shall have any claim or demand to any remainder, reversion or expectancy, in any eftate after the death of any peron within age, married woman or any other peron, upon affidavit made in Chancery by the perons claiming such eftate, and by them caufe to believe that such peron, married woman or other peron, 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 protesting, such minor, married woman or other peron, and if such

Ligand or other peron shall neglect to produce such in- fiant, &c. on whose life such eftate depend according to the directions of the order, the court of Chancery is required to order such guardian, &c. to produce such eftate. If the person dead, or of whom it is supposed that shall die, two of whom commissioners shall be nominated by the party protesting; and in case such guardian, &c. shall neglect to produce such eftate, &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. to be concealed shall be taken to be dead, and it shall be lawful for any peron claiming title after the death of such eftate, &c. to enter upon such lands as if such eftate, &c. were dead.

Stat. 2. If it shall appear to the court by affidavit, that such person, &c. for whose life such eftate is holden, is at some certain place beyond the seas, it shall be lawful for the party protesting such order, to fend over the perons appointed by the said order to view such minor, &c. in case such guardian, &c. shall neglect to produce to such perons a personal view of such eftate, &c. such perons shall be entitled to take the same; and the return shall be filed in the Petty-bag, and thereupon such minor, &c. shall be taken to be dead.

Stat. 3. If it shall afterwards appear upon proof in any action that such eftate, &c. were alive at the time of such order made, it shall be lawful for such eftate, &c. to be produced; and upon such any estate determinable upon such eftate, to re-enter upon the said lands, and maintain any action against those who received the profits, or their executors or administrators, and therein to recover damages for the profits received.

Stat. 4. If any such guardian, &c. having any estate determinable upon the life of any other person, shall to the satisfaction of the court make appear, that they have used their utmost endeavours to procure such eftate, &c. to appear in court, or elsewhere, according to the order and that they cannot procure such eftate, &c. to appear and that such eftate, &c. were living at the time such return made and filed; it shall be lawful for the peron to continue possession of such eftate.

Stat. 5. Every peron who as guardian or trustee for any eftate, and every husband sealed in right of his wife and every other peron having any eftate determinable upon any life, which is the death of the determiner of such eftate, or under the express conditions of them who are next intitled upon the determination of such particular eftates, shall hold over and continue in possession of any lands, shall be adjudged trepellers; and every peron, his executors and administrators, who shall be intitled to such lands by reason of the determination of such particular eftates, shall recover in damages against every peron holding over, and against his executors or ad ministrators, the value of the profits received during such wrongful possession.

Stat. 14 Geo. 2. c. 20. sect. 9. Eftates for autre vie in case there be no special occupant therefor, of which no devise shall have been made according to 29 Car. 2. c. 3. or so much thereof as shall not have been so devised, shall be distributed in the same manner as the personal eftate of the tettator or intestate.

Lifefee, is a rent or exhibition, which a man receives either for term of life, or for life in fee tail. Such

Not a good estate; nor terroram felsen poffam annos & diev (viz. his life-rent,) ife viuente computatur inter bona sua, libit. Skinner ad quos. Attach. cap. 18. verf. 5.

Ligamentum, (Ligamentum.) Is true and a faithful ob

description of the subject to his sovereign; sometimes it signifies the dominions or territory of a lord, or any born out of the ligament of the King; also the same with Ligenatum. See Co. et Lin. fal. 129. and 7 Rep. Calver's cafe.

Ligamentum, (Ligamentum.) Is thus defined in the Gas, Craftumalty of Normandy, cap. 13. Ligamenta scil. et cap. 16. Dominus tenuatur sibiullus, cuius terra est in senes, hereditatis, proprii corpus praebeat confilis & auxilium suum, & eft in omnibus indicibus exhibere, ut adavitantius
adversarium partem in alignum confegre, & c. This is otherwise called Legatus, Cajun, de Conclutio, Burm. Leg. pug. 420, 421. This word is often used in our statutes, as 14 Hen. 6. c. 2. and several others. It seems to be derived from the Ital. lega, a league or bond; Vinculum artis inter feudatnm & Regem utruique commoditatem habere & jurem, jürum regis, illius ad tristis & dubium judiciorum; and hence the word is used for marriage. A man may owe or be 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 the King. Cowell, edit. 1727, 151, 152. It is mentioned in flat. 22 & 23 Car. 2. Act for clearing, &c. the streets of London.) Are those that carry away, by water, dung and rubbish in lighters, from the city of London.

Light-houfe. For enabling the master, &c. of Trinity-houses to rebuild Edyston light-houfe, 4 Ann. c. 20. 8 Ann. c. 17. For maintenance of the Starries lightes, 3 Geo. 2. c. 36. See Ships.

Lights. Stopping of lights of a house is a nuisance; but flapping a proept is not, being only matter of delight, not of necessity; and a person may have either an affize of nuisance against the persons erecting such nuisance, or he may be held to his own ground and abate it. 9 Rep. 58. 1 Mod. 54. If a man has a vacant piece of ground and builds thereupon a house, with good lights, which he sells or lets to another; and after he builds upon ground contiguous, or lets the same to another perfon, who builds thereupon to the nuisance of the lights of the first house, the title of the freehold hereof, is no more chargeable upon the cafe against such builder, & c. and the former they were to be lights of an ancient mefquage, that is now altered. Med. Ca. 116, 314.

Lights and lamps, Houtholders in Middlesex and Surveys within the bills of mortality, at what times to set out lamps, 2 M. & W. 7. c. 24. 8. c. 15. None but Brifih oil to be used for lamps in dwellings-houses, under penalty of 40s. 8 Ann. c. 19. fell. 18.

Ligurianum, The right which one hath to cut fuel in the woods: Some time 'tis taken for that tribute or payment which is for cutting wood.

Ligurum batar, Where exempt from duties, 1 Geo. 2. l. 2. c. 17. fell. 5.

Lignamina, Timber fit for building, Do Frese. Line and lemmur juice, To what duties liable, 4 Will. & M. 5. c. 2.

Ligula, A proept, by exempfication, or transcript of a curtail or deced. Cowell, edit. 1727.

Ligurcito, A flatterer. Liguritio, mendaces, rapaces, Dei gravissimae hancat. Lec. Cant. 29. Mr. Summer is of opinion that it signifies a glutton, from the Saxon hec-rid. ligulphus. See paras.

Limitation, (Limitatam,) 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 by the common law. Ca. 114, 111.

It seems, that by the Common law there was no statute or fixed time to the bringing of actions; for tho' it be said by Braden, that Omnibus aetiones in mundis infra certa semper limitationem habent; yet my Lord Coke says, that limitation of actions was by force of divers acts of parliament; and he, in general position of Braden's admitted of several exceptions. Braden, edit. 2. c. 128. 2 Hift. 95. Co. 115. 4 Co. 10, 11.

But we find that by the ancient law there was a limited time for the heir to claim after the death of his ancestor, or else he lost his land, according to the feudal tenures. Et quia infinitas majora quatordecim annis jus incertum, et neglectum per annum, in capite, et de familia, quod in domino non viritat, transacta his spatio, feudum amittat & ad dominum redireat. Spelin. Gloss. 32.

The limitation upon this period of a year and a day, upon several other restorations, was deduced from his ancient rule, and on this occasion it was pitched upon, when the services appointed seem to be annually com-
of his or their ancestor or predecessor, and declare and
allege any further feisin or possession of his ancestor or
predecessor, but only of the feisin or possession of his
ancestor or predecessor, which hath been, or now is, or
shall be feised of the said lands, tenements, rents,
commissions, pensions, portions, coperties, or
other hereditaments, within therefore years next before
the rofe of the same writ, or next before the said pre-
scription, title or claim, to hereafter to be sued, com-
mitted, brought, made or had.
As it is further enacted by the said statute, par. 2.
[9] That no manner of perfon shall sue, have or maintain
any affile of mortis ancieke, cofenance, ayle, writ of entry
upon didinion, done to any of his ancestors or predecessors,
for any manors, lands, tenements or other hereditaments,
of any further feisin or possession of his or their ancestor
or predecessor, but only of the feisin or possession of his
or their ancestor or predecessor, which was or hereafter
shall be feised of the same manors, lands, tenements or
other hereditaments, within fifty years next before the rofe
of the original of the same writ hereafter to be brought.
It is further enacted, par. 3. [10] That no perfon shall sue,
have or maintain any action for any manors, lands, ten-
ements, or other hereditaments, of or upon his or their
own feisin or possession therein, above thirty years next
before the rofe of the original of the same writ hereafter
to be brought.
And further, par. 4. [11] That no perfon shall hereafter
make any action for any wasted or possession of any rent, suit
or service, and allege any feisin of any rent, suit or service,
in the same awory or cognizance in the possession of
any other, whose estate he shall pretend or claim to
have, above fifty years next before the making of the
said awory or cognizance.
And it is further enacted by the said statute, par. 5.
[12] That all formedons in reverter, formedons in remain-
der, and fere facias upon fines of any manors, lands,
tenements, or other hereditaments, at any time here-
ter to be sued, shall be sued and taken within fifty years
next after the title and cause of action fallen, and at no time
after the said fifty years.
And by the said statute, par. 6, it is enacted, [13] That
if any perfon do sue any of the said 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, suit, service or other heredi-
taments, and cannot prove that the false peron or per-
sons, whose actions or writs were in actual possession of
feisin of and in the same manors, lands, tenements, rents,
suits, services, annuities, commons, pensions, portions,
coperties or other hereditaments, at any time or times
within the years before limited and appointed in this pre-
rent act, and in their state and form as the same
fame above described or denised, by the party, plaintiff,
defendant or awont, or by the party, tenant or defen-
dant; that then, and after such trial therein had, all and
every such peron and perons, and their heirs, shal from
the dathenceforth be utterly barred for ever of all and every
the said writs, actions, awories, cognizances, precrip-
tions, titles or claims, which be sued, be had or made, and
for the same manors, lands, tenements, heredit-
taments or other the premises, or any part of the same,
for the which the same action, writ, awory, cogniz-
ance, precription, title or claim, hereafter shall be at
any time had, sued or made.
Now this statute hath the usual faving for infants,
feme coverts, persons in prision and be fore.
In the constraction of this statute it hath been helden,
That in a formedon in reverter or remainder, or on a
fere facias, on a fine of fuch nature, the demandant need
not mention the statute in order to make out his title, but
may proceed, if he would take advantage of it, must
plead it. Dyr. 315. b. 101. 1 So in an awory for rent.
It has been held, that this statute being in restraint
of the Common law, ought to be construed literally; and
that therefore it does not extend to a formedon in defen-
dor, effervit, nor refivit. 4 Co. 8. 1 And. 16. Lit. Rep.
383.
If A. by deed indented, made a feisin in fee to
B. and his heirs, rendering it payable to A. and his
heirs, of which rent A. or his heirs, have not been
feised with in forty years, yet the heirs of A. may disa
main the right to have a writ thereon in fee, whereby
wherebefore the statute the awont was obliged to allege
a feisin; and that was where the feisin was so material,
and of such force, that though it was by increasement,
yet could not be avoided in an awory. 8 Co. 46. b.
Copper and Fisher adjudged. 1 Burn. 169. S. C.
In Clarke, to be relieved touching a rent-
charge upon lands by a will, the defendant pleaded
the statute of limitation, and that there had been no de-
mand or payment in forty years; and it was held, that
this statute concerns only customary rents between land-
lord and tenant, and not any rent that commences by
grant, wherein the commonplace may be known. 2
The statute does not extend to the services of eucage
homage and fealty, for a man may live above the time
limited by the act; neither doth it extend to any other
service which by common possibility may not happen or
become due within sixty years, as to cover the hall
of the lord, or to attend the lord in the war, &c. Cite.
Lit. 115. a. 2 Inst. 95. 4 Co. 10. Brutis's cafe. 6 Co. 8.
3 Lev. 2. 1
And where the tenure is by homage, fealty and eucage
uncertain, and by suit of court or rent, or any other
annual service, for the reversion of the suit of court or rent,
is a good feisin of the homage, fealty or eucage,
or other accedent services, as wardship, heir
service, or the like. 2 Inst. 96. 4 Co. 8 b. Winc.
By the 1 Mar. cap. 5, it is enacted, [14] That the 32
Hatt. 2. b. the first, it not extend to any writ of right of
advowson, seignior possess, or other daveer preten-
sion, nor just patronatus, nor to any writ of right of
ward, writ of awishment of ward for the wardship of
the body, or for the wardship of any cattles, honours,
manors, lands, tenements or hereditaments holden by
knights-service, but that such suits may be brought as
before the making the said act.
By the 21 Jan. cap. 16, for quieting men's eftates
and avoiding of suits, it is enacted, [15] That all writs of
ormedon in defennder, formedon in remainder, and form-
edon in reverter, at any time hereafter to be sued or
bought of for any manors, lands, tenements or
his or her own, whereby any peron or perons now hath or
have any title, or cause to have or pursue any such writ
shall be sued and taken within twenty years next after
the end of this present feffion of parliament; and after
the said twenty years expired, no peron or perons, or
any of these, of what souereign or land, or any of the said
manors, lands, tenements or hereditaments; and that all writs of formedon in defen-
der, formedon in remainder, formedon in reverter, of
manors, lands, tenements or other hereditaments what
forever, at any time hereafter to be sued or brought by
occasion or means of any title, or cause hereafter
arising, shall be succedent and taken within twenty years
next after the title and cause of action first defended of
fallen, and at no time after the said twenty years; and
that no peron or perons that now hath any right of title
of entry into any manors, lands, tenements or heredi-
ments, now held from him or them, shall thereto be
sued, but within twenty years next after the end of
this present feffion of parliament, or within twenty
years next after any other title of entry accrued; and that
peron or perons shall at any time hereafter make an
entry into any lands, tenements or hereditaments, b
within twenty years next after his or their right of title
being thereby extinguished or disabled to the same
and in default thereof such perons so not entering, at
their theirs, shall be utterly excluded and disabled for
such entry after to be made; any former law, &c.
Provided, That if any person or perons, that is
shall be intended to such writ or writs, or that hath
shall have such right or title of entry, he or shall be,
5. but and I found, the time of the said right or title frill defended, accu-
ding, come or fallen, within the age of one and twenty years, or shall the said cause upon compus mortis, or if be taken by the fear, that then such person and persons, and his 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 $7, for such person and persons, or his or their heir and heirs, within ten years next after which they shall all die, disappeare, coming of found mind, enlargement out of prison, or coming into this realm, or death, take benefit of and fare the fame, and at no time after the said twenty years.

In the construction of this statute it hath been held, that one of one joint-tenant is the posses-
sion of the other, so far as to prevent this statute. 1 Salt. 285.

That a claim of entry to prevent the statute of limits-
ations must be upon the land, unless there be some special easement to the contrary. 1 Salt. 285.

If that a person be barred of his farmes, he is not hereby hindered to pursue his right of entry which afterwards accrues to him, no more than a person, who has several remedies, and discharges one of them, is excluded thereby from pursing the others. 1 Launc. 781. 

If A. has paid posseion of lands for twenty years without interruption, and then B. gets posseion, upon which A. is put to his eje6lment, though A. is plaintiff, yet the posseion of twenty years shall be a good title in A, as if he had been in posseion, because a posseion is of itself a very good bar to the title of another, and where the title is not fraudulently or unfairly taken against a man, but he is actually ouitted or defrauded, it is not to be avoided until the statute of limitations, because an act made for the preservation of the publick quiet, and no ways tending to the prejudice of the lord or tenant. Abo. 10. 27.

But ecclesiastical persons are not bound by any of the statutes of limitations, because it would be a false

crime to evade the statutes made to prohibit their alien-

2. Of the limitation of time in regard to actions on penal

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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 be accounted and taken to be of record from that day forward, and not to be considered that no process be filed out upon such information, until the information be exhibited in form aforesaid, &c. and that every clerk making out process contrary to this act shall forfeit 40 $.

And it is further enacted by $7 Jan. 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 provision of the said statute of 21 Jan.) until the informer or relator hath first taken a corporal oath before one of the judges of the court, that he believes in his conscience the offence was committed within a year before the information or suit within the county where the said information or suit was commenced, &c."

In the construction of these statutes it hath been held, that the 21 Jan. 1. cap. 4. does not extend to any offence created within the statute of limitations on subsequent penal statutes are not restrained thereby, but that statute is to them as it were repelled pro tanta. 1 Salt. 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 an offence at Common law, is not restrained by any of these statutes. Hbk. 270. 4 Mod. 144.

That if an information be brought after the year on a penal statute, which gives one moiety to the informer, and the other to the King, it is bought only as to the informer. Cro. Cas. Car. 331. Crs. Jac. 366, and side Dall. 60.

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 Show. Rep. 353.

That the information of a party is not within the restraint of these statutes, but may be laid where the same manner as before. Cro. Eliz. 645. No. 71. 3 Lem. 237.

It feems doubtful whether a suit by a common informer on a penal statute, which frills gives an action to the party frilled, and in his default, after a certain time, to any one who will file suit, be wise, so that prosecutions on the said statute of limitations are not restrained thereby, but that such statute is to them as it were repelled by the statute of limitations. 1 Salt. 421. said to have been wise so to ruled by Halk.

That if one tenant in common receives the whole sale within twenty years, or more, yet this does not bar his or his assigns the right of posseion. 1 Salt. 339. 2 Salt. 422. S. C.

If A. has had poiseion of lands for twenty years without interruption, and then B. gets poiseion, upon which A. is put to his eje6lment, though A. is plaintiff, yet the poiseion of twenty years shall be a good title in A as if he had been in poiseion, because a poiseion is of itself a very good bar to the title of another, and where the title is not fraudulently or unfairly taken against a man, but he is actually ouitted or defrauded, it is not to be avoided until the statute of limitations, because an act made for the preservation of the publick quiet, and no ways tending to the prejudice of the lord or tenant. Abo. 10. 27.

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2. Of the limitation of time in regard to actions on penal

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By the 31 Eliz. cap. 5. par. 5. it is enacted, "That if actions, suits, bills, indictions or informations, which will be brought for any forfeiture upon any statute real, made or to be made, whereby the forfeiture is or shall be limited to the Queen, her heirs or successors only, shall be brought within two years after the offence committed, and not after two years; and that all actions, suits, bills or informations, which shall be brought for my forfeiture upon any penal statute, made or to be made, for the time of the statute, the benefit and benefit of which is or shall be by the said statute limited to the Queen, her heirs or successors, and to any other that shall prosecute in that behalf, shall be brought by any person that may lawfully sue for the fame within one year next after the offence committed; and in default of such forfeiture, 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, indiction or information shall be brought after the time limited, the fame shall be barred, and for ever.

And it is provided, that where a shorter time is lim-

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By the 18 Eliz. cap. 5. par. 1. it is enacted, "That if an action be brought upon any penal statute, a special note shall be made of the ver
Serjeant Havelin makes it a quittance, whether the
charge in 31 Eliz. par. 4, by which it is enacted, That
nothing in the said act contained shall extend to cham-
pern, or common, theft, or stealing, but that every
such offence may be laid in any county; any thing in the
said act to the contrary notwithstanding, deoth except the
defendant spoke the jubtifiable words of the funder, and yet
did not speak all the words; and yet the plaintiff could
not be cognizant of the words of fact, unless for a debt
of 1s. if the defendant says non debet the 1s. will be
after adding non aliquem idei denarii, it would be bought,
but the court held the cause 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-
sequent words only, and the words spoke to the
plaintiff, and he is not cognizant of the words only to them; and it was held well enough. 1 R. 826, 916. Lydgate v. Butler.

By the 21 Jac. 1. cap. 16. page 3, it is enacted, That
all actions of trespass and from, all actions of
	tressfs, detine, action for trespass, and replevin for
taking away goods and chattels, all actions of account,

and the said actions of account, and the said actions to
them, that is to say, the said actions upon the cause, (other than for landlord) and the
said actions of account, and the said actions for tre-

pafs, debt, detine and replevin for goods and chattels
and the said action of trespass for clawnam fugitum
within three years next after the end of the then
session of parliament, or within five years next after
the cause of such actions or suits, and not after;
	and that action upon the cause for words, within one
year after the end of the then session of parliament, or

within tw

years next after the cause of such actions or suits, and not after;

Nevertheless, that if in any the said actions or suit
judgment be given for the plaintiff, and the fame be
reversed by error, or a verdict for the defendant,

upon matter alleged in arrest of judgment, the
judgment be given against the plaintiff, that he take nothing by
his

plant, rent or bill; or if any the said actions shall

be reversed by error, or the defendant be reversed as lawed, and shall after reverse the outlawry, that in
cash, the party plaintiff, his heirs, executors or ad
ministrators, as the cause shall require, may commence
new action or suit, from time to time, within a year after
such judgment reversed, or such judgment given

against the plaintiff or outlawry reverted, and not after.

Provided, That if any petion or persons that is
shall be intituled to any such action of trespass, detine
action for trespass, replevin, actions of account, action of
debs, actions of trespass for assault, menace, battery
wounding or imprisonment, upon the cause for
words, there shall be, at the time of such cause; or

action given or accrued, fallen or come, within the age of
twenty-one years, fame covert, non compus, impri-

ned, or beyond the seas; that then such petion or person
shall be at liberty to bring the same actions, so as they take the cause within such times as are before limit

not having been upon this lifetime, by age of

age, or burden of fame memory, at large, and returned from beyond the
seas, as other persons having no impediment should have
done.

Here we shall consider and set down each cause, about
which there hath been any content, as to the actions be
in our inquiry, as to the defendants content, the

speaks; those by speciality, as all others of a
superior nature, being plainly excepted out of the statute.
It seems clearly agreed, that though the statutes of limitations bind the courts of equity, that yet a trust is not within these statutes. *March* 129; 2 *Salk.* 124.

And therefore where the plaintiff, who was the son and executor of Ch. *Heath,* who was made Ch. *Osier,* during the time of the judgment, but never at *Weilminster Hall,* exhibited a bill against the defendant, prothonotaries of K. *B.,* at that time, to have an account of the money, *etc.* received by them during that time by an implied trust *virtute officii,* to which the defendant pleaded the statute of limitations; but upon argument there was an order to the like effect.


So where the plaintiff exhibited a bill to have an account of money received by the defendant from his father (whose executor he was) which gave it to him to compound for his debts, required for delinquency at *Goldsmites-Hall,* and it was ordered by the court declaring it a trust, and therefore not within the statute of limitations.


So where my Lady *Hally* lent 100 l. and in the note which was given for it, mention was made, that it should be dispersed of as my Lady disposed of it; and a bill being exhibited for it, the court held it a depositum or trust, and decreed payment of it; tho' otherwife it had been barred by the statute of limitations.

*Vern.* 345. S. C.

A charity 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 seems 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 hand, it hath been sometimes decreed, that the poftellor should account no farther than for the profits made in his own time, to discharge the flriving in such dormant titles; also the courts have allowed time of time to be pleaded in bar, where the mortgagor, which hath been defended as a fee without entry or claim from the mortgagor, and where the poftellor for would be intangled in a long account; and in these cafes the statute of limitations has been mentioned as a proper direction to go by. *1 Cham.* Ca. 102. But now by the 7 *Ge.* 2. the redemption of mortgages is expressly limited to twenty years. See *Stiglitz.*

*4. At what time the right of action *shall* be laid to have accrued, 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 promises to pay 10 l. to *J. 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 accrues from the happening of the contingencie, from which time the statute shall be a bar, and not from the time of the promise. *Godd.* 437.

So in an action of the cafe wherein the plaintiff declared, that in consideration that he would forbear to sue the defendant for some itself killed by his the defendant's dog, the defendant promised to make him satisfied upon requet, and that such a time he requetted, *etc.* was held, that the right of action accrued from the requet, and not from the time of killing the sheep; and that therefore the defendant could not plead the statute of limitations, the requet being within fix years, though the killing the sheep, and prompt of satisfaction was long before. *Godd.* 437.

So in *affruit,* in consideration that the plaintiff would deliver to the defendant such a deed, the defendant promised, that he would redeliver it to him on requet, and also in consideration that he had, upon requet, delivered to him another deed, the defendant promised to pay him 40 l. and allegence, that he had delivered to him the first deed, and although at such a day afterward; he made requet, yet he had not re-delivered the
Therefore it hath been agreed, that for a suit upon a contract, propter aliquam more, no prohibition should go upon their refusal of a plea of the statute of limitations. 6 M. & B. 26.

So it hath been held to be impracticable to proceeding in the spiritual court, pro vincione majori immunitate in ecclesias, because the proceeding is pro informatione mouentis, and pro invenzione habendi. 2 Salk. 327.

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 allowing the Admiralty jurisdiction therein, only a matter of indulgence. 2 Salk. 474. 6 M. & B. 60.

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 sued within six years next after the cause of such suit or actions shall accrue, and not after.

5. Of the exceptions in the statute: 21 Jac. 1. c. 16, and what will give a bar thereof.

As to this it hath been adjudged, that the last proviso in the statute not only extends to such actions therein enumerated, but also to an affirment, the not mentioned, and to all other actions on the cause being of equal merit, and plainly within the intention of the legislature. Gra. Cor. 2455. 333. 2 Sund. 120. 2 M. & J. 71. 1 Sid. 452.

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 brings 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, that 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 had 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 be in perhaps might have his action of account, of course, and therefore no necessity 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 safe taking of the account, which cannot be so well done in 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, &c. shall be of his remedy in this court. Ave. Eq. 359. Lecuy. v. Lecuy.

2. Exception in relation to merchants accounts. As to this exception, it hath been a matter of much controversy, whether they extend to all accounts open and current only; the words of the statute being, 'That all actions of trefpas, &c. all actions of account, and upon the other of such actions as concern the trade of merchants, so that by the words, other than such actions, not being bad actions of account, it has been inferred that all actions concerning merchants are excepted. 17 Ann. 451. 2 Sund. 124, 125. 1 Lev. 287. 2 Kebr. 621. 1 Lev. 298. 1 Font. 90. 1 M. & J. 272. 2 M. & J. 312. 2 Tenn. 459.

But it is now settled, that accounts open and current only are within the statute; and therefore if an account be stated and settled between merchant and merchant, a sum certain agreed to be paid him in such case, 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 merchant accounts, no other actions are excepted but actions of account. Corb. 276.
Also it hath been adjudged, that bills of exchange for value received, are not such matters of account as are intended by the exception in the statute of limitations. *Carth. 226.*

3. Exception in relation to persons beyond sea. It seems to have been aptly agreed, that the exception as to persons beyond sea, extends only where the creditors or plaintiffs are at present, 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 not the creditor's folly, that he did not live an original, and in the case of the标的, it would have been the bank of the statute. *Carr. Cru. 245. 333. 1 Faw. 252.*

But as the creditors being beyond sea is favored by the 21 Va. 1, so now by the 24 & 25 Ann. cap. 15, it is extended, That if any perfon or perfon, against whom there shall be any cause of action for, or by, or against whom shall be any cause of action of trespas, devise, action for trover or reprovel, for taking away goods or chattels, or of account of account, or upon the cafe, or of debt grounded upon any lending or contract without specialty, of debt for arrears of rent, or affall, battery, wrongfull or malicious imprisonement, or any of them, be, or shall be, at the time of any such cause of fuit or action given or accrued, fallen or come, beyond the seas; that then fuch perfon or perfon, who is or shall be intituled to any fuch fuit or action, shal] have fuch an advantage against fuch perfon or perfon after their return from beyond the seas, within fuch times as are limited for the bringing of the said actions by the 21 Va. 1.

4. Where no executor or administrator to sue or be sued. If a receiver money belonging to a perfon who afterwards died intestate, and to whom he made out a receipt, and brings an action against A. to which he pleads the statute of limitations, and the plaintifl replies, and shows that administration was committed to him such a year, which was infra fex annas; tho' fix years are expired since he received the money, yet not being to fince the administration, the action is not bar'd by the statute. 1 Salt. 424. Currey v. Stephenson. Stain. 555. 3 Mod. 376. Latch 335. S. C.

It is said in general, that where one brings an action before the expiration of five years, and dies before judgment, the five years being then expired, this shall not prevent his executor, administrator, or their assignee, from bringing an action against the defendant. But if an executor sues upon a promissory note to the ator, and dies before judgment, and five years from the original cause of action are actually expired, and the executor brings a new action in four years after the fift executor's death, the statute of limitations shall be a bar to the action, as it would have been as afo above, and not bar'd by the statute, of an abatement of the action after the fex years elapsed by the plaintiff's death; yet the executor should make a new prosecution, to which the clause in the statute, that provides a year after the reversal of a judgment, &c. may be a good direction, or fhow that he is in a manner as early as he could, because there was a contref 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 vouchers lost. *Trin. 1 G. 2. Wilkes v. Hoggins.*

If there be no executor against whom the plaintifl may bring an action, he shall not be prejudiced by the statute of limitations, nor shall any laches in such cafe be imputed to him. 2 Vern. 695.

5. Where no jurisdiction to sue in, or where hindered by some authority. It seems agreed, that where being to courts, or the courts of justice being flue, no time is to be allowed, and that where the defendant was shipwrecked, or where the civil war an affampt was brought, that the defendant pleaded the statute of limitations; to which the plaintifl replied, that a civil war had broke out, and that the government was usurped by certain traitors and rebels, which hindered the course of justice. It should have been turn'd up, and that within five years after the war ended he committed his action; and this replication was held ill, for the statute being general, must work upon all cases which are not excepted by the exception. 1 Keb. 157. 1 Lev. 31. Carth. 157. 2 Salt. 420.

And in confirmation of this doctrine we find that an act of parliament on the 2 Ul. iii. was passed, 5th of December (which was the day that King James departed, till the 24th of March 1688, when King William assumed 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 have the whole time as is from the 24th 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 save a bar of the statute; because the plaintiff may have fixed an original without being guilty of any breach of privilege. 1 Lev. 24. 11. Carth. 147.

So it is laid, that if a man fues in chancery, and, pending the suit there, the statute of limitations attaches on his demand, and his bill is afterwards dismissed, the matter being properly determinable at common law; in such cafe the court will preserve the plaintiff's right, and will not suffer the statute to be pleaded in bar to his demand. 1 Vern. 73. 74.

If the statute of limitations be pleaded to an action, the plaintifl to fave his action may reply, that he had commenced the suit in an inferior court within the time of limitations; and if it was removed, he shall have his day and cause return, and the plaintifl may reply the fuit below, and shew that he had been within the five years; but that this suit was a continuance of the suit below, but that the plaintifl had rightfully and legally purfued his right; and it should not be in the power of the defendant, to defeat or hinder him of a remit without any default. 2 Salt. 424. Matthews v. Phillips.

6. Where the fuing out a writ will fave a bar of the statute. It is clearly agreed, that the fuing out an original will fave a bar of the statute of limitations, and that thereupon the defendant may be oufett; and that if after the fuing out of the writ, tho' it fhall be revirTed after his return, yet the plaintifl may bring another original by journies accounts, and thereby take advantage of his fuit writ. *Carth. 136. 1 Salt. 420. 3 Mod. 311.*

Also it is agreed, that the fuing out a lattit is a fufficient commencement of a fuit, to fave the limitation of time, because the lattit is the original of B. R. and may be continued on record as an original writ. 1 Sid. 53. 65. Carth. 233. 1 Salt. 421.

Also it hath been ruled, that to a plea of the statute of limitations the plaintifl may reply, that he fued out a lattit, and continued it by writs, without concluding great point per recordam; for the lattit roll is only for the private use of the court, and no record. 2 Keb. 46. Bette v. Widd.

So it seems the plaintifl may reply, that he fued out a lattit of fuch a term, without fenting forth the day of the term; that the plea of a lattit served the same purpofe as the plea of the first day of the term. *Stil. 158. 2 Keb. 360. S. C. cited.*

But tho' the fuing out an original, or lattit, will be a fufficient commencement of a fuit, yet the plaintifl, in order to make it effettual, muft fhow that he hath continued the writ to the time of the action brought. *Carth. 12. 2 Salt. 101. 254. 3 Mod. 33. That the attorney's writing the continuances on the writ in his chambers is sufficient. 1 Sid. 53. 1 Keb. 142.*
L I M

As in affumpsit for fees due to an attorney, the defendant pleaded non assumpsit infra ass fees; the plaintiff replied, that on such a day two years before, he had sued out an attachment of privilege against the defendant; upon which writ tatter praecipsum feque; that the defendant (on such a day) had paid the term of his fees, appeared, and the defendant declared against him modo & forma, &c. And upon demurrer to this replication it was held ill; because the plaintiff did not set forth any continuance of this writ of attachment, (for vis non mist fitre,) which was found out two years before; for 'his impossible that the defendant could appear before the courts by tatter, to a writ returnable two years before, and no other writ is set forth by the plaintiff; but if the plaintiff, after the tatter praecipsum feque, had shewn the last attachment, and the return thereof, upon which in truth the defendant did appear, it had been well enough, without fwoing any of the continuances. 1 Co. H. 141. Rudd v. Berthon.

6. Of the manner of pleading and taking advantage of the statute of limitations.

It seems to be admitted, that the statute of limitations must be pleaded positively by him that would take advantage thereof; and that the same cannot be given in evidence, especially in an affumpsit, because the statute speaks of a time past, and relates to the time of making the promise. 1 Lev. 131. 4 Sid. 253. See Co. 1. Sir. 115. 1 Lev.

In replevin the defendant pleaded Not guilty De capite praedicto infra ass fees anns ultima ennfla; and though it is true, as the defendant's case does not contain this non re- pete, and if he did not take, he could not be guilty of an unlawful detainer; 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, because he ought to have answered to the detainer, as well as to the taking; also a thing may be lawful and yet unlawful kept; as by being put into a cattle, &c. by which means it could not be repleived. 1 Sid. 91. Arundel v. Trelaw. 1 Keb. 279. S. C.

In treffas, for a treafa done thirteen years before, the defendant pleaded, that infra ass fees, &c. non vis ratio culpabill. Plaintiff replies, that he brought his action such a term, and that within five years before that time the defendant did the treafa; and upon this the defendant takes issue, and is found guilty: And it was held, 1st, That the defendant's plea was good in bar, without pleading the statute. 2dly, That the plaintiff's plea of the statute of repugnancy; although it was objected, that he could have replied nothing, but that he was under some of the disabilities, for which there is a saving in the statute; for the plaintiff is not tied to the time or place laid in the declaration, but may vary it from upon its evidence; and in case the defendant, by his plea, pleads to a time or place, and thereby makes the time or place material, the plaintiff may follow him without any departure. R. M. 56. 1 Lev. 130. 1 Keb. 666. S. C. Lee v. Rayns. See 3 Buc. Abr. and 15 Vin. Abr. tit. Litigation. 3. Litigation of the crown. See King, &c.

Linington, is a word which we only find resident in the Med. and it signifies eneamelled; spu de linington, is enamelled work, una cre de opere limen, &c. Monial. 3 tom. 331.

Lunarium, A place where flux is found, a flux plat. Et melungium quod est jaure centemarum arm livant, quod pueor justa prudicit melungium. Pat. 22 Hen 4. Par. 1. m. 39.

Lindbeffen, Is a place often mentioned in our histories, being formerly a bishop's fee, now Holf. Lind, &c.

Lincoln, In attainst of a verdict of the city of Lin- coln, the jury shall be impanelled of the county of Lincoln, 13 H. 2. 4. 2. 19. 3 Hen. 5. 4. 5. 17. 2 H. 8. 25. 28 H. 8. cap. 4. Against deceit in linen cloth, 1 El. c. 12.

Duties on linen imported, 2 W. & M. st. 2. 2 cap. 4. St. 6. 7. 4. W. & M. cap. 5. f. 12. 

Bendap
45. No one shall have any founded plantation, or any complaint against it, except as provided in the plantation act, and no one shall have the benefit of the rules for the protection of the said plantations, except as provided by law.

46. If any person shall make or mend a false oath, or shall give false evidence, he shall be liable to a penalty of one hundred pounds for every false oath or false evidence given by him, and a penalty of five pounds for every false oath or false evidence given by any other person, and a penalty of ten pounds for every false oath or false evidence given by any person, who shall have the benefit of the said plantations, except as provided by law.

47. If any person shall enter into the said plantations, or shall remain in the said plantations, after the said plantation act shall have taken effect, he shall be liable to a penalty of one hundred pounds for every false oath or false evidence given by him, and a penalty of five pounds for every false oath or false evidence given by any other person, who shall have the benefit of the said plantations, except as provided by law.

48. If any person shall enter into the said plantations, after the said plantation act shall have taken effect, he shall be liable to a penalty of one hundred pounds for every false oath or false evidence given by him, and a penalty of five pounds for every false oath or false evidence given by any other person, who shall have the benefit of the said plantations, except as provided by law.

49. If any person shall enter into the said plantations, after the said plantation act shall have taken effect, he shall be liable to a penalty of one hundred pounds for every false oath or false evidence given by him, and a penalty of five pounds for every false oath or false evidence given by any other person, who shall have the benefit of the said plantations, except as provided by law.

50. If any person shall enter into the said plantations, after the said plantation act shall have taken effect, he shall be liable to a penalty of one hundred pounds for every false oath or false evidence given by him, and a penalty of five pounds for every false oath or false evidence given by any other person, who shall have the benefit of the said plantations, except as provided by law.
A &c. concerning giving of liberties repealed, 3 Car. 1. c. 2.

Liberty of land. See Habilat.

Liberty of fessum. (Dolbritatis fessum) Is a delivery of possession of lands, tenements, or other corporeal things, (for things incorporeal no liberty of fessum may be) to one that has right, or a probability of right thereto, unless the same be an incorporeal, 3.) Tradita debet off velicum, & non nuda. It is a ceremony used in conveyance of lands or tenements, where an estate in fee-simple, fee-tail, or a freehold palfich: And it is a testimonial of the willing departure of him, who makes the liberty, from the thing whereof liberty is made. For by the delivery of the land, and the receipt of the land, is a willing acceptance by the other party of all that whereof the other hath devoted himself. The common manner of delivery of fessum 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 vendor, in the name of possession or fessum, 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, (none being left at the time within the house, or upon the land,) that the vendor, who enters alone, shuts the door, and preferently opens it again. If it be a house without land or ground, the liberty is made, and possession taken by delivery of the ring of the door and deed only. And where it is without deed, either of vellums or tenements, there the party delivers a ring of his or her mouth before witnesses the estate in parts with, and then delivers fessum or possession in manner aforesaid: And so the land or tenement palfich as well as by deed, and that by force of the liberty of fessum. See Hjfi, Symbol, part. 1. lib. 2. post. 156. and Coke on Litt, fol. 49. a. There was anciently a pair of gloves, a ring of iron, or ear of wheat, &c. delivered in sign or token of liberty and fessum. — Nummum donationem, per nummulum sacer altere Sancto Mariae apostoli, aliensi Priores, &c. Charta Rob. Comitiss Northingham, an. 1142. See Frofsintim.

Liberty and outler le maine, Is where in yeall before the edictator, 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. 3. c. 4. See Outler le maine.

Livery of the crown of London. In the companies of Londo- ners, livery-men are chosen out of the freemen as adherents 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. Rpp. 10. See London.

Lobbe, A large kind of North-Sea fish. Stat. 31 Ed. 3. b. 3. c. 2.

Loblers, May be imported by natives or foreigners, and in any vellums, notwithstanding 10 & 11 Will. 3. c. 24. 1 Geo. 1. b. 2. c. 18. fol. 10. Penalty on taking loblers on the coast of Scotland between May and September, 9 Geo. 3. c. 2. See Local.

Local, (Locatis) Signifieth in a legal sense as much as tied or annexed to a place: For example. The thing is local, and annexed to the freeth. Kitchin, fol. 180. And again, in the same place, an action of trea- sony, felony, &c. to transfer, not to sell, that is, not necessarly that the place of the battery should be set 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, fol. 239, the place is not local, that is, not material to be set down in certain. The guard of the person, and of the land differ in this, because the person being transary, the lord may have his ravishment de gared, before he be seised of him, but not so of the land, because it is local. Perkin's Gras 30.
LON
Proceedings on a foreign voucher, St. Glou. 6 Ed. 1. c. 12. 
Atric St. Glou. arrest 9 Ed. 1. 
Damas shall be affiicted by the affine in novel difficu;
and amercements shall be assailed before Barons of the 
Exchequer, St. Glou. 6 Ed. 1. c. 14. 
Wines fold contrary to the affine shall be prefixed 
to the Barons, St. Glou. 6 Ed. 1. c. 15. 
None shall walk in the streets armed at curzes, unless 
attendants on their servants with lights, St. Cin. Lond. 
13 Ed. 1. f. 5. 
'Taverns and alehouses shall be shut at curzes, St. Cin. 
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. Cin. 
Lond. 13 Ed. 1. f. 5. 
None shall be brokers in London but those who are 
admitted and sworn by the mayor and aldermen, St. Cin. 
Lond. 13 Ed. 1. f. 5. 
The officers of the city shall not be punished for fals 
imposition, unless it appear to be of malice, St. Cin. 
Lond. 13 Ed. 1. f. 5. 
The manner of proceeding for arrests of rent and ser 
vice, Stat. de Gueldes, 10 Ed. 2. 
The mayor, &c. of London, &c. shall be tried by foreign 
jurors, who may give an indemnity for not redressing 
equity, 28 Ed. c. 10. 
Virtuals may be freely sold in London, 31 Ed. 3. f. 1. 
The mayor, &c. shall have the rule of fishmongers, 
butchers and poulterers, 31 Ed. 3. f. 1. c. 10. 7 Ric. 
II. Privilege granted to them of London to sell virtuals by 
retail, 42 Ed. 3. c. 7. 
The mayor shall have the prohibition of the Thames 
and Medway for preserving the fальн, 17 R. c. 9. 
Of the breaches in the Thames, 4 H. 7. f. 15. 27 
H. 8. c. 18. 
The aldermen shall continue in their offices, till re 
newed 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 Faringdon divided, and to have two al 
dermen, 17 R. 2. c. 13. 
The penalties in 28 Edw. 3. c. 10. for not redressing 
their 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 Reina de la gare 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, 35 H. 8. 
c. 10. 
c. 12. 
Attains of untrue verdicles in London shall be tried in 
London, 37 H. 8. c. 5. 
No new buildings to be erected within three miles of 
London or Wymington, 35 Ed. c. 6. 
For bringing the New River to London, 3 Jac. 1. c. 18. 
4 Jac. 1. c. 12. 12 Geo. 2. c. 32. 
A commission of judicature erected 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. 
21 Car. 2. c. 11. 
Houses built otherwise to be deemed public nuisances, 
19 Car. 2. c. 3. 
Dangerous trades prohibited in the high streets, 19 Car. 
2. c. 3. feft. 21. 
Aldermen in London have the fame power as justices of 
peace, 22 Car. 2. c. 1. feft. 15. 
Rates for wharfage and cragane, 22 Car. 2. c. 11. 
feft. 21. 

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Dimensions of wharfs from London Bridge to the Tem 
ple, 22 Car. 2. c. 1. feft. 21. 
The maintenance of the Curcy in London settled, 33 & 
24 Car. 2. c. 15. 
For discovery of concealment of chattels given during 
during the plague, 22 & 23 Car. 2. c. 16. 
A court of judicature to determine differences con 
cerning houses burnt in the fire at Southwark, 29 Car. 2. 
c. 4. 
The judgment against the city on the quo warrants va 
cated, 2 H. & M. c. 8. 
Houses, &c. may carry inland provisions within the port 
of London without cokes, 3 Ann. c. 1. c. 28. 
Commission of the Queen's water-works to be incor 
bated, 8 Geo. 1. c. 26. 
For regulating elections, &c. in London, 11 Geo. 1. 
c. 18. feft. 1. 
Oath, &c. to be taken, ibid. 
Penalty of false oath or affirmation, 11 Geo. 1. c. 18. 

The aldermen negative in common council establi 
shed, 11 Geo. 1. c. 18. feft. 15. 
Repeal'd, 12 Geo. 2. c. 8. 
Freemen impudently to dispose of their effects, notw 
ithstanding the cullion, 11 Geo. 1. c. 18. feft. 17. 
All letters of administration in the jurisdiction of the 
court of confquences, 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. 
feft. 11. 
The admission and swearing of the mayor to be on the 
day preceding the 9th of November, 20 Geo. 2. c. 30. feft. 4. 
The paffage over and through London Bridge to be 
widened, 29 Geo. 2. c. 40. 
Penalty of laying rubblish in the streets of London, &c. 
32 Geo. 2. c. 16. feft. 13. 
London allowance. See Innuance. 
Longtitude. A word used in Thorn's Chronicle, and it 
signifies speciem jraguus, a coverlet. Cowell, edit. 1727. 

London. A reward for discovering the longitude at sea, 12 Ann. f. 2. c. 16. 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. 2 Geo. 3. c. 18. Encour 
gegement 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. 
Longtudinal. An inaccuracy in Cowell, edit. 1727. 

Lord. (Dominus, Sax. Hlafep, signifying a brea 
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 those so called by the courtesy of England, 
as all the sons of a Duke or Marquefs, and the eldest son of 
an Earl: Sometimes to persons honourable by office, as 
Lord Chief Justice, &c. and sometimes to an inferior 
peron that hath fexe, and consequently the homage of 
tenants within his manor; for by his tenants he is called 
Lord, and in some places, for distinction fake, Landlord: In 
which last signification, it is most used in our law 
books, where it is divided into Lord paramount, and Lord 
mesne. Lord mesne is he that is owner of a manor, and by 
virtue thereof hath tenants holding of him in fexe, and by 
copy of court roll, and yet holds himself of a superior lord, 
called Lords paramount, or above him. Old Nat. Brit. 
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 mesne, and tenant; 
the lord paramount is very lord to the tenant. Bretz., tit. 
Herit. num. 

Lords engaged to procure the King to obferve the 
statute, 14 Ed. 3. f. 1. c. 21. 
The peers of the land to redrefs by judgment things 
done against Magna Charta, 15 Ed. 3. f. 1. c. 1. 

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Lords to be judged by their peers, 15 Ed. 3. c. 1. c. 2. 1 Ed. 6. c. 12. sect. 15. 1 El. c. 1. sect. 34.

For the placing of the lords, 37 Hen. 8. c. 13.

Lords to have privilege of clergy without burning, 1 Ed. 6. c. 12. sect. 15.

See Parliament. Decrees.

Lop High Admiral. See Admiral.

Lop of a man. See Copphola.

Lop in groves, F. N. B. fol. 3. Is he that is lord, having no man, as the King in respect of his Crown, Bld. fol. 5, and fol. 8, where is a cafe wherein a private man has land in groves, see. A man makes a gift in tail of all the land he hath, to hold of him, and dieth; his heir hath but a feigniory in grogs.

Lords Marchers. See Wales.

Lotteries, or Lotteries. May well be declared from the said draw. There are one of the companies of London that makes bets for bridles, fleets, and such like small iron ware. 1 R. 2. c. 12.

Lofanga, A flatterer: We read it in Brompton's Chronicle, pag. 991. Herbertus lofanga, that is, Herbert theisOpen, epiicerum, &c. Emis de Rey, Godwin writing of the bishops of Norwich, mentions this Herbert; forhe, in ecclia monumut genus losanga. See Annual, 2 tom. pag. 218.

Lot, Contribution or duty. See Scor.

Lot, or Loth, Is the thirteenth dish of lead in the Derbyshire mines, which belongs to the King. Cowell, edit. 1727.

Lotticure, or littervitt. Is a liberty or privilege to take amends of him that defileth your bond-woman without licence, Ruffell's Expedition of Words; so that it is an amends for lying with a bond-woman. Cowell, edit. 1727.

Lottery, A lottery for one million on the duty on salt 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.

Considerers to pay costs to protector, 9 Ann. c. 6. f. 56.

8 Geo. 1. c. 2. sect. 37. Selling chances of tickets in public lotteries prohibited.

5 Geo. 1. c. 9. f. 43. Sales by way of lottery prohibited, 8 Geo. 1. c. 2. sect. 36. Penalty on publishing foreign lotteries, 9 Geo. 1. c. 19. sect. 31.

Of selling or procuring chances in foreign lotteries, 6 Geo. 2. c. 35. f. 29. Additional penalties on lotteries, 12 Geo. 2. c. 28.

Sale of lands by lottery void, and the lands forfeited, 13 Geo. 2. c. 28. sect. 4.

Not to assign in estate in lands, &c. held by allotment, 13 Geo. 2. c. 28. sect. 11.

Not to extend to Royal palaces where the King resides, 12 Geo. 2. c. 28. f. 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, 29 Geo. 2. c. 2. sect. 26. 30 Geo. 2. c. 5. sect. 32. See Gaming.

Lot, Provoking unlawful love was one species of witchcraft punishable by flat. 1 facet. c. 1. c. 12. See Witchcraft.

Lucernarius, A ram or bell-wether. Cowell, edit. 1727.

Lucangial, (Fr. Luardie, inhumanitas, incivilitas.) In Notius pro strutis London, printed anno 1573. art. 45. Calling any corrupt thing, or appothing the water, is burqulry and felony. Some think it a corruption of burghley. See Cliff. in a. Scriptura, versio Burgalria.

Lud William and spirits. See Witches.

Ludwille, (mentioned in 23 Eliz. cap. 10.) Are such as go with light and a bell, by the sight whereof birds sitting on the ground, become somewhat flupified, and so are taken with a net. This name is derived from the word bull, which in the Saxon, or old English, signifies a flame of fire. See the Antiquities of Warrickshire, pag. 4.

Llyn

Lobiate, A recompence for the death of a man killed by a towmull, or, as we say, by the mob. Cowell, edit. 1727.

Lud be Rige a Regina, Playing at cards, so called, because there are Kings and Queens in the pack. Cowell, edit. 1727.

Lumbarum, A lamp or candle let 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 parishes churches. See Kenett's Glaifomy to Parochial Antiquities.

Lunatick, Is defined to be a person who is sometimes of good and found memory and understanding, and sometnes not: Aliquando ganda lucibus interdictis: And so long as he hath not understanding he is non corpus mentalis. 1 Inst. 247.

By lat. 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 phrensy, whole person and estate by virtue of any act of parliament shall be committed to the care of particular trusties, shall marry before he or she be declared of sane mind by the Lord Chancellor, or such trusties as the act ordaineth, or the major part of them, or few, whose marriage shall be void. See Sects and Lunatikhs.

Lunda, A weight formerly used here. Landa angullorum conscientia de 10 stiles. Fleta, lib. 2. cap. 12. par. 7.

Lundrefs, A feeling or sufferer in a restrained frenzy, signified nothing but a silver penny, which at first was said to be as heavy as a penny is now, and was once called a landref, because it was to be coined only at London, and not at the country mints. See Leandre's Essay upon Coins, p. 17.

Lupanatril, A bawd or trumpet. Rex majori & min. Londin foal. Quia intellimus quod plures robatur & murdraver perpetvum por recepteurs & receptarius publici lupanaires in diversa huius in civitate Noah pra- dices, &c. Calv. 4 Ed. 1. p. 3. m. 16. dorfo.

Lupinum raput gerere, To be outlawed, and so have one's head exposed like a wolf's, with a reward to him that shall bring him in.——Hugo familis Waterly probofatores aliquos non comparatur, unde dictum sibi quin & quo Hugo nobis comparare ad pacem Rex, quod gere- ratur lupinum caput, fictus fictus est.——Piecta Corone 4 Joh. Rot. 2. in dorfo.

Lupillatur, A place where hops grow, a hop-garden. Ca. 1 lef. 10. b.

Luthebrugh, or Luttenburgh. Were a base sort of money coined beyond sea, to the like to that of English money, in the days of Edward the Third, and brought in to deceive the King and his people: to avoid which, it was made treason for any man wittingly to bring in any such. Stat. 25 Ed. 3. stat. 4. cap. 2. 3 part Indul. fol. 1. And. 1437, tells us, that in certain anno defterior in Angliae pro abusivum & indigenous mercaturas falsa moneta, quae lubinum appellatur off, unde a judicium Luttenburg multi mercaturas & allis plures bus traici & lufpentes. Lutfenfrings, See Ditto.

Eyeld-will, Left-Flower, A small fine or pecuniary composition paid by the customary tenant to the lord for some small injury, &c. See Some of Clericind.

Lympputina, A lime-pit. Cowell, edit. 1727.

Lyndeborde, Was a doctor both of the Civil and Canon laws, and dean of the Arches. He was emba- ffer for Henry the Fifth into Portugal, anno 1421, as appeared from his Preface to his Commentary upon the Pa- tronials. Cowell, edit. 1727.

Lynn, For rebuilding the houses there, 26 Hen. 8. c. 8.
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 Fyella, establisht with it, which was the back leaf 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 denouncing excommunication, and direful anathema's against the infringers of it. We read in H. 7. ep. 28, that King John, to appease his bar reconciliation, yielded to laws or articles of government, much like to this Great Charter: But we have now no anciener 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 King Henry the Fifth, and the fifth penny of all the moveable goods, both of the spiritual and temporal, throughout the realm. Spelman in his Gloss. on this word, calls it, Angulifimum Anglicarum libertatum diploma & sacra anchora. It is magnum in parvo, and hath been above thirty times confirmed, says Coke upon Littleton, fol. 81. 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, edd. 1727.

Anathema's against the infringers of Magna Charta; Sententia brev. 28 Hen. 3. St. Conf. Cart. 25 Ed. 1. c. 4.

Writs shall be granted against the infringers, St. 3. 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. 1.

The charters shall be publickly read in the cathedral churches, St. Conf. Cart. 25 Ed. 1. c. 2. and by the sheriffs, Art. fofer Cart. 28 Ed. 1. t. p. 3. c. 4.

Three knights to be elected in each county, to hear complaints of offences against Magna Charta, Art. fofer Cart. 28 Ed. 1. c. 4. 

See Charta magna.

Magna pictoria, A great or general repeal-day, the lord of the manor of Harrew in cam. Middlesex, had (in 21 R. 2.) a cuffum, that by summons of his bailiff upon a general repeal-day (then called magna pictoria) the tenants should do 199 days work for him; every tenant that had a chirurgery was to fend a man. Phillips of Paracaus, pag. 145.

Magnus centum, The great hundred or six-fire. Cart. 20 Hen. 3. m. 1.

Majestas, The temple of Majestas, so called by Matt. Paris, and because the galleys, nolle and fongs there used were ridiculous to the Christians, therefore they called antick dancing, and every ridiculous thing, a marrie.

Maiden aiffles, Is when at any aiffles no perfon is condemned to die.

Maiden reyes, is a noble paid by every tenant in the manor of Bishol in Cam. Radnor, at their marriage, and it was ancienerly given to the lord for omitting the custom of Marebita, whereby some think he was to have the first night's lodging with his tenant's wife: But I rather suppoite it to be a fine for the licence to marry a daughter. See Majestas 1.

Majestas, (from the Fr. majestas, i.e. futer eratius) A braifer's shop; but some are of opinion that it signifieth an house, quœ majestia. Cowell, edd. 1727.

Majestas, (Majestas, from the French word majesty,) signifies a great and most heroic, by which a man lefeth the sife 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 fircns be made to affirm; or if an eye be put out, fore-tiet, broke, or any other thing hurt in any man's body, whereby he is disabled to defend himself, or offend his enemy. Glen will, lib. 14. cap. 7. See Braden at large, lib. 3. trat. 2. cap. 24. msn. 3. Britton, cap. 25. and Stanwix, pl. 1. cap. 1. and the Mirrbor of Jysters, cap. 2. De Houlewode, the cutting off an ear or nose, the 5 H breaking.
breaking of the hinder teeth, or such like, was no maim, being rather a deformity of body, than diminishing 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 part of the body, is a maim; and it is commonly tried by the justices inspecting the party: And if they doubt whether it be a maim, or not, they use to take the opinion of some able chirurgeon in the point. The Grand Council of Normandy, cap. 6, calls it macabram, and the Connelsii, Membrum mutilitiurn, which latter sense is to say, that is about the loss of a member, or the use thereof; and Membrum, Caffan, de Cufi. Burg. pag. 168. defines thus, Et par corporis habet definitim operationem in corpore. See Skene De werburn Significationes, verbo Mammun. See Co. on Litt. lib. 11. cap. 11. fol. 194. Homo Maimiatus, a maimed person. By this latter law there is always to lay an appeal for maimed or wifid wounded: When it was laid to the charge of the defendant or appellee, that he did it nocument in scintia, i.e. maliciously, and with an evil or felonious intent: And the appellant did offer Disputationes, &c. about him, and Maimiatus, prout curio Domini Regis confideratur. Vid. Bracton, lib. 3. cap. 24. n. 1. 2. Cowell. edit. 1737.

Maim is by others defined to be an hurt done to a man's body, whereby he is rendered irks able in fighting, either to defend himself, or annoy his adversary; such as the cutting off, disabling, or weakening a hand or finger, liveness, the severing of a head or eye, &c. and these are properly said to be maimed, and to come under the notion of felonies; but the cutting off an ear or nose are said not to be properly maimed, because they do not weaken a man, but only disfigure him. Co. Lit. 126, 128. 3 Hil. 25, 118. 1 H. 6. C. 111.

By the old Common law, calumny was punished with death, and other maimers with the loss of member for member; but of latter days maimer was punishable only by fine and imprisonment. Bract. 144. 3 Hil. 62. And by the statute 22 & 23 Car. 2. c. 1. it is enacted, 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 subject of his Majesty, with intention in doing to maim or disfigure, in any the manners before mentioned, such his Majesty's subject, that then, and in such case the person or persons so offending, their counsellors, aids 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 cæfa of felony without benefit of clergy.

Provided, that no strainer of such felony shall extend the benefit of clergy, or forfeite the drawer of the wife, or the lands, goods or chattels of the offender. If a man attack another of malice forethought, in order to murder him with a bill, or any other such-like instrument, which cannot but endanger the maiming 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 design to murder by maiming, and consequently a malicious intent to main, as well as to kill; in which case the offence is within the statute, tho' the primary intention was murder. State Tr. vol. 6. fo. 94. So ruled in Gough's trial, who together with Westburne was condemned and executed at Saffohall, 8 Geo. 1. for flitting the notion of Mr. Cripse.

Bail inbibil, An old may-game or ludicrous custom for the priests and people in procession to go to some abbey, who were to follow the day before the day of Saint John of Leu, with a may-pole, boughs, flowers, garlands, 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 Gribhead.

Bail inmancum, to draw or take away by force; lateinam, fallum, aut fallus, good nuts made were laterous. Si sofera praedixra fuiro biit


Bail, (Malacum.) A coat of mail, it is called mail, from the French malle, which signifies a figure, or the Spars, or a ring of iron without any other coat of mail, because the links or joints in it resembled the figures of a net. Maille, with a double i signifies a round ring of iron; from hence the play of Falst-mail, from fallis a bill, and the round ring through which it is held. Lifeh, edit. 1737.

Bail, A secretly a kind of money. U. C. See Mallemai.

Miiller, Silver half-pennies. In 9 Hen. 5. by indenture in the mint, a pound-weight of old Herling was to be coined into three hundred and fifty pennies, or pennies, or fain hundred and twenty mali, or one hundred and forty-fair halfpence. See Leandor's Epitome upon Coins, p. 28.

Maining. Cutting out tongues, maineing, &c. made felony, 5 Hen. 4. c. 5. Cutting off the ears of a man, or the tongue of a boll, punished with treble damages, and vol. five, 37 Hen. 6. c. 4. fol. 74.

Maind. A light oath, swear. Sf nioli agonizd, emendis tisam mainaod, id id, perjurium diplothei. — Leg. ino Regis, c. 34.

Maine-pote, (In hano portato.) In a small tribute, commonly of leaves of bread, in which some places the parishioners pay to the rector of their church, in recognation of being relieved for the poor, &c. The, or Mainau, or Maiiner, (from the French mainer, i. ean tradia.) In a legal sense the term that a thing a taken away, or stealth. As to be taken with the maine, Pi. Car. fol. 179, is to be taken with the thing stolen about him; and again, fol. 194. it was prefentated, that a theft was delivered to the goods, or vicount, together with the mainier And again, fol. 186. If a man be indicted, that he feloniously stole the goods of another, where, in truth, they are his own goods, and the goods be brought into the court as the mainau, and it be demanded of him, what he hath to the goods, he declare them; though he be found guilty of the felony, he shall lose the goods: And again, fo. 149. If the defendant were taken with the mainier, on the maine be carried to the court, they, in ancient time would arraign him upon the mainier without any appeal or indictment. Cowell, edit. 1737.

Maine, or maine may be let to bail, bailable and what persons are bailable appears in the statute o Wifm. 1. cap. 15. made anno 3 Edu. 1. See Bail.

Mainepeynors, (Mainepeynors,) Are those persons to whom a person is delivered out of custody or prifon, as they become security for him, either for appearance or an answer to the cause. But in former times they were called Almoria, and it is not certain whether they do it as it were man capre &c. or capre & vociis, in cattali vol prifos. And the prisoner is said to be bailable to bail from the words of the bail-piece, viz. A. B. Uc. traditis. in baliun j. D. & R. R. Ye. See Salpuiit, (Mainepunt.) It is compound of two French words, viz. main, mainaum, pri, captus: It signifies in our law, the taking or receiving a man into friendly custody, that otherwise is or might be committed to prifon, upon secufity given for his forthcoming at day a digned: And they that thus undertake for any, are calle Mainepeynors, because they do receive him into their hands, Steauon, Pi. Car. fol. 179. from hence comes the word mainourable, which designes him that may thus be bailed; for in many cases a man is not mainourable whereof see Bre. tit. Mainepeynor per testam, et F.N.B. fol. 249. Mainau, in his Foroi Laws, pag. 167, make a great difference between biit and mainepeynor; for he is to be bailed on his own recognisances, and returned to the court, if he return not to be at bai, and to go at his own liberty out of ward until the day of his appearance; but otherwise he is, where a man is let to bai to four or two men by the Lord Chief Jufficer in eye o the forefeth, or any other judge, until a certain day; so there he is always accounted by the law to be in their ward until the day of his appearance; because they do keep him in ward or in prifon all that time, or otherwise at their will; so that he is so bailed, shall not be
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said by the law to be at large, or at his own liberty: but for Moreau, The Mirror of Justice differing
between pledges and mainpernors, faith, that pledges are
more general, and that mainpernors, are body for body, ib. 2. cap. De Trepassi Veniali, and lib. 3. cap. De Pledge & Mainpernors. When mainpernors may be granted and when not, see Crompt. Foss. of Peace, fol. 135, and 143, and Lamb, Eiren, lib. 2. cap. 2. page 330. See also Britton, fol. 37. cap. De Pledge & Mainpernors. Lastly, the Mirror of Justice faith, that pledges are those that bail or redeem any thing out of the body of a man, but mainpernors are those that see the body of a man; and therefore that pledges belong to the court of common law, and mainpernors to personal. Couell, edit. 1727. See Lati.


Mainteint. Is he that supports or secures a cause de-
ending in suit between others, either by disburfing money, or making friends for either party. Stat. 19 Hen. 7. 14.

Maintenance, (Mainentanis, and manentanenis.) Signi-
ifies the upholding of a caufe or person, either by word, writing, countenance or deed; metaphorically drawn from accouenting a young child, that learns to go by one's hand: in law it is the word feems to appear as by 2 Henry 8. c. 9. And when a man's act in this kind is by an accounted maintenance, and when not, see Breake, t. Maintenance, and Kichin, fol. 202. and F. N. B. fol. 2. and Crompt. Jurid. fol. 38. The writ that lies gainst a man for this offence, is called Maington, fup. 9. and 49. Special maintenance, Kitchin, d. 204. seemeth to be maintenance, most properly to be termed. Couell, edit. 1727.

Maintenance in general, is defined by others an un-
lawful taking in hand, or upholding of quarrels, or suits, the disturbane and hindrance of common right, and is to be twofold. Co. Lit. 368. b. 2 Infol. 208. 212. Hawk. P. C. 249. First, Rivalis, or in the country; where one affifteth another in his pretentions to certain kinds, by taking or helping the possession of him for bafe or substity; or where one firs up quarrels and suits in the country, in relation to matters wherein he is no party concerned; and this kind of maintenance is punifi-
hable at the King's bafe by fine and imprisonmment, where-
ther the matter in dispute any way depended in ple or at; or it is faid not to be actionable. Co. Lit. 408. Infol. 213. 2 Roll. Adr. 115. Secondly, Curialis, or in the City, where one officiously intermeddles in a suit depending in any fuch court, which no way be-
ings to him, by affifiting either party with money, or therewith, in the prosecution or defence of any fuch suit. Infol. 212. 2 Roll. Adr. 115. Of this second kind of maintenance there is not a great deal to be therein cited; 18. Where he maintains one body to fail or have the part of the thing, in which he is not concerned, and this kind of maintenance is punifi-
hable at the King's bafe by fine and imprisonmment, which feems to be maintenance, most properly to be termed. Couell, edit. 1727.

1. What shall be deemed acts of maintenance; and in what respects some fuch acts may be justified.
2. How maintenance is restrained and punished by the Common law, and by statute.
3. Of offence of buying or selling pretended titles.

1. What shall be deemed acts of maintenance; and in what respects some fuch acts may be justified.

It is faid, that not only he, who affifts another with money in his caufe, as by retaining counsel for him, or otherwise bearing him out in the whole, or part of the expence, but also in his hindrance of common right, and the takes the expence, which otherwise he may be put to, is guilty of maintenance; as where one persuades, or at endeavour to persuade a man to be of counsel for another prettie. Bro. Maint. 7. 14. 2 Roll. Adr. 118. 1 Hawk. P. C. 248.

Alfo it seems to be an act of maintenance to open evidence to the jury, or to give evidence officiously without being called upon to do it, or to speak in a caufe as one of counsel with the party, or to retain an attorney for him; and fome have faid, that it is maintenance even barely to go to court, for which he is no party, to give an opinion in the law. Hep. 78. 79. Cre. Eliz. 735. 2 Roll. Adr. 593. 2 Roll. Adr. 118.

It seems to be maintenance for a man of great power and intereft to lay publickly, that he will fend 201. on one fide, or 201. on the other, to give 201. to the jury; and it hath been faid to be maintenance for such a perfon to come to the bar with one of the parties, and fland by him while his caufe is tried, without faying any thing: But a promife to maintein another is not maintenance, unlefs it be in repect of the publick manner in which it is made, or manner 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 verdifi; but it feems to be no maintenance for a juror to exhort his companions to join with him in fuch a verdifi as he thinks right. 1 Hawk. P. C. 250.

It feems 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 faneft to ferve him from such an arreft; or what counceillor or attorney is likely to do his business moft fuccefffull for it would be extremely poffible the fubjects intermeddling with each

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fuch asfeems commendable than blame-worthy, to come under the notion of maintenance; which always feems to imply a contentious and over bulky intermeddling with other mens matters, in which repect it is too highly criminal: yet there is that, that a pertinacious, not unlearned in the law, may be guilty of maintenance, by telling another, who affifts his advice, that he has a good title. 1 Hawk. P. C. 250.

It is no maintenance to give a man money, who has no fuit then depending, unlefs it plainly appear that it was given with a design to affift him in a suit intended, which fuit is afterwards actually brought. 1 Hawk. P. C. 250.

It is as much an act of maintenance to fupport a man after judgment given, as to do it hanging the plea. 1 Hawk. P. C. 250.

It feems clear, that not only thoefe who have an actual interefl in the thing in variance, as thoefe who have a revefion expeftant on an effate-tail, or on a leafe for life or years, &c. but alfo thoefe who have a bare con- tinuity of an intereft in the lands in queftion, which pof-
ibly may make fuch an action fubfiduous, or thoefe who in the act of God, have the immediate ri
dibility of fuch an intereft, as heirs apparent, or the husband of fuch heirs, tho' it be in the power of others to bar them, may law-
fully maintein another in an action of trelips, concerning fuch lands; and if a plaintiff, in an action of trelips, alien the lands, the aliener 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 Roll. Adr. 115. 117. 2 Infol. 564. Bro. Maint. 28. 53.

Alfo he who is bound to warrant lands may lawfully maintein the tenant in the defence of his title, because he is bound to maintein other lands to the value of thoefe that shall be evifited. Bro. Maint. 51.

Alfo he who has an equitable intereft in lands or goods, or even in a caufe in aeration, as a coflum one troth, or a vendees of lands, &c. or an aflinee of a bond for a good confideration, may lawfully maintein a fuit concerning the thing in which the other afeems to have an equity; and from the fame ground it feems plainly to follow, that the grafc for a reversion for good confeffion might, without any at-

tomment, maintein the tenant of the land, before the statute 4 & 5 Ann. which makes fuch atternent needless. Noy. 58. 100. 1 Hawk. Adr. 468. & 472.

Wherever any perfon claims a common intereft in the fame thing, as in a way, church-yard and common, &c. by the fame title, they may maintein another in a suit concerning
concerning such thing; and a man's boat may take care to have his appearance recorded; but, as June say, they cannot safely intermeddle further. In the course of decent usage, 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 his servant, or by his prayer or husband of such an heret. 2 H. 5. 54. 1 Haw. P. C. 252.

Not only the actual lord, but also the cafui qui 
se of a feignory, may come with the tenant to a trial in an 
affire against him, and stand by him, and asift him, and 
also pray to the court to return an indiñertry; and 
it furnishes a bar, that he cannot justly lay out his 
money in defence of his tenant's title: Also the 
lord of a town may maintain the inhabitants in an action, 
wherein the right to their common burying-place is 
questioned, by shewing authentic evidence of it to the jury. 

A tenant may lawfully come with his lord, and 
stand with him at a trial. 1 Haw. P. C. 253.

A matter may go along with his servant, or with 
his domicilick chaplain, to retain counsel; also he may 
pray one to be of counsel for him, and may go with him, and 
stand with him, and asid him at the trial, so long as he is not 
found guilty of non-payment. And if the servant be 
aretted, the matter may asist him, money 
to keep him from prifon, that he may have the benefit of 
his service; but the matter cannot lawfully lay out money 
for the servant in a real action, unless he have some of 
his own, and bear the court's costs: but thoe, with the 
fervant's consent, he may lawfully defray. Br. Maint. 44. 52. 
H. sy. 79. Also 814.

A person retained generally as a servant, and not 
for a particular occasion only, may lawfully ride about to 
seeed his master's business, and may go to counsel for him, 
and shew his evidence to the court, or to the jury, and stand 
by him at a trial, but cannot lawfully lay out his own money in the suit. 1 Haw. P. C. 253.

Any one may lawfully give money to a poor man 
to enable him to carry on his suit; also any one may law-
fully go with a foreigner who cannot speak English to a 

A counsellor having received his fee, may lawfully 
forth his client's cause to the best advantage; but can no 
more justify giving him money to maintain his suit, or 
threaten a juiror, than any other perfon. 2 H. 5. 54.

2 H. 114. 

Afo an attorney specially retained may lawfully pro-
secute 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 
promise; also an attorney so retained may in like manner 
maintain his client in a court wherein he is an allowed 
attorney; but, as some say, cannot have an action for 
the money laid out in the suit, without a special 
promise; but an attorney who maintains another is no way 
judged by a general retainer, to prosecute for him in all 
causes; for, by his retaining the person, he has not a 
caufe for another at his own expense, with a promise 
ever to expect a re-payment; and it is questionable, 
whether solicitors who are no attorneys can in any case 
lawfully lay out their own money in another's cause. 
Kew. 380. 1 K. 1. 1. 6. 5. 52. 1 L. 262. 
C. C. T. 999. 9 Med. 69.

But counsellors and attorneys using deceitful practices in 
maintenance of their client's cases are punishable by the 
Common law, as well as by the statute of Wm. 11, 
1 cap. 28. which enacts, "That if any forreign, pleader or 
other, do any manner of deceit or subterfion in the 
King's court, or con晨t unto it in deceit of the court, or 
be beguile the court or the party, and thereof be attain-
med, he shall 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 shall be im-
prisoned in like manner by the force of a year and a day 
at the leff; and if the trefpas require greater punish-
ment, it shall be at the King's plea. 2 H. 5. 215.

And if there be an action within the statute to bring a pre-
ence, that the cause be here in the court of justice, and (or 
purpose to ouit the true tenant; or to procure an atty-
ney to appear for a man, and confes a judgment with-
out any warrant; or to plead a falsa pleae, known to be 
utterly groundles, and invented merely to delay justice, 
and to abuse the court. 2 H. 5. 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 
foot of the party grieved b, which it may also be indicted and 
and imprisoned, &c., and it feems that a court of record 
may commit a man for an act of maintenance in the 
face of the court. 2 Red. Ab. 114. 2 H. 208 
H. sy. 79.

By 1 Ed. 3. cap. 14, and 2 Ed. 3. cap. 4. it is 
expressed, That none of the King's ministers, nor or 
great man of the realm, by himself nor by others, by 
leading of letters nor otherwise, nor none other gift, 
or small, shall take upon them to maintain quarrels 
parts in the country to the disturbance of common right 
and quiet, as shall be molesting one another, and 
no person whatever shall take or sustain any quarrel 
and maintenance in the country or elsewhere, on grous 
pain; that is to say, the King's counsellors and great 
attorneys, on a pain that shall be ordained by the King 
they or by the advice of the lords of this realm; and other 
oficers of the King, or some to maintain their offices, 
and be imprisoned, and ransomed, &c., and all other per-
sons, on pain of imprisonment and ransom, &c.,

In the construction of these statutes the follow-
point have been holden.

That no til record is a good plea to an action at 
the foot of these statutes, by which it may appear, that they extend to the 
taking out an original, which is never returne 
but they extend as well to maintain in a court baro 
as to maintenance in a court of record; neither is 
material whether the plaintiff in the action, 
where there was such maintenance, was noncertified or recov 
for it is said, that none of the statutes of mainte 
nance extends to the spiritual court. 1 Haw. P. C. 130-7.

He who fears that another will maintain his adver 
fary, may, by way of prevention, have an origi 
grounded to these statutes, prohibiting him to do it. 
1 Haw. P. C. 156.

By the 32 Hen. 8. cap. 9. No person shall unlaw 
fully maintain or cause or procure any unlawful main 
tenance in any suit in any of the King's courts, when 
any person shall have authority by the King's com 
mand, patent or writ to hold pleas of lands, or to est 
mine, hear or determine any title of lands, &c. Any 
person shall unlawfully maintain, for maintenance of an 
uit or plea, any person or persons, or embrace any fee 
holders or jurors, or suborn any witnesses by letters, 
words or promises, or any other manner, to main 
tain him in any matter or cause, or to the disturbance of Jaufice 
'&c., on pain of 10 l. any moiety to the King, the offi 
to the informer.

In an information thereon it is not sufficient to 
lay that the defendant maintained the party, without addi 
that he did it unlawfully; neither is it sufficient to lay 
that a bill was exhibited, without further shewing that 
plea was depending. 1 Haw. P. C. 258.

3. Offence of buying or selling pretended title.

It forms an high offence at Common law, as plain 
tending to oppression, for a man to buy at an under rat 
2 doubt.
A doubtfull title is 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 were unchallenged. *Mai. 751.* *Pl. 1673.* *Hib. 115.* *Piso. 60.

Also by the 1 R. 2. cap. 9. reciting, that many persons having true title to lands, &c. were wrongfully delayed; by means that the defendants did make gifts and surrenders of their lands in debate, and of their goods to their heirs against whom the said pur pursants durst not make their pursuits; and also that many persons used to divide others, and aon to make seoffments sometimes to great men to have maintenance, and sometimes to persons unknown, to the intent to delay the said difficulties, &c. and therefore it is enabled, "that no gift or seoffment of tenements or goods be made by force to have maintenance, and that if any be made, they shall be held for none; and that the said difficulties shall recover against the first difficers their lands and damages, without having regard to such alienations, so that they commence their suit within a year after the difficlin."

It is further enacted by 36 Hen. 8. c. 9. "That no person shall bargain, buy, sell, or by any means obtain any pretended rights or titles, or take provisi, grant or covenant to have any right or title to any hereditaments, unless the seller, &c. his ancestor, or they from whom they claim, have been in possession of the same, or of the possessions or grants thereof, or take the rents or profits thereof for one whole year next preceding the bargain and sale, &c. on pain that such seller shall forfeit his 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 bought; the one half of the said forfeitures to be to the King, the other half to the buyer to whom he will sue, whether his freehold or copy-old. 4. Ca. 26. a. *Ca. Lic. 366.* *Mai. 655.* and therefore the plaintiff in this action must shew the value at the time of the bargain. *Cra. Cor. 233.*

But it is provided, "That it shall be lawful for any person, being in lawful possession, by taking of the yearly profits, or profits of any hereditaments to buy or sell, by any reasonable means, the pretended right or title to any other person to the same."

Provided, That no one shall be charged with thefe peccalties, unless he be fixed 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 reiterate in an action brought upon it; but if you take a
you to receive it, a material miscarriage will be fatal, *Id. Rep. 365.* *Piso. 84.* *Cra. Cor. 233.* *Dyer 74.* an action in title, the seller must not be a person who at the title, it must be expressly appear, that the defendant knew that the seller had not been in a year in possession; but in such an action the buyer, the contrary must expressly appear; for these it may be intended that he was *particus criminis.* *Leen. 167.* *Lit. Rep. 369.*

A contract for a lease for years, unless fairly made in a title in possession, is within the statute, whether it was made off the lands, or the lands by a certain 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. Lic. 359.* *A eos. 166.* *Aed. 76.*

No conveyance by one who has the uncontested possession and absolute undisputed property of lands, as by a defender having obtained a release from the deforfe who had the true right not contested by any other person dispossessed, or by a mortgagor having redeemed his lands, 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 usual rent, that is, where the one who recovers lands by virtue of an ancient title, within the meaning of the statute, though he had the abbatial property and possession of the land; for the intent of the statute was to restrain all persons from transferring any disputed rights of the possessors. *Cra. Lit. 356.*

Whoever has a revision voted for his life, 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. 356.*

For more learning on this subject, see 15 Vin. Abr. tit. Maintenance.

**Mai.** The only method of determining the acts of many is by a majority; the major part of members of parliament can 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 majority is, there by the law is the whole. *Br. Corporations.* *Pl. 69.* See 15 *Vin. Abr.* *page 183.* 184.

**Halius.** A mayor, doth not come from the Lat. major, but from an old English word major, i. e. majestic. *Cowell, edit.*

**Halius.** A family, quas memnontia. Id. ib. *Halius dict.* (Fr.) An hospital or almshouse. See *Meaon dict.*

**Maius.** A house, mansion or farm. *Cowell, edit.* *1737.***

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**Maius.** A house, mansion or farm. *Cowell, edit.* *1737.*

**Maius.** (Pecores.) Signifies to perform or execute; 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 oaths of the parties to the same, to the intent to put an end to the action. *Old Nat. Breu.* *fol. 161.* *Kitchin, fol. 192.* *Si placitum debito vel transagii aliquid placitum fuerit inter vicinos, & defendentes negentur & suadenter legem veris querentur, johanno facere legem cum tantum manu, &c. (Inq. de Conciatis. *Maius de summis a tempore Abelianis Regis.*) i. c. The defendants were to bring three percontories to swear with them. Which law femeth he borroweth from the *Parli.,* which call those men that came to swear for another in this case facremotes. Of whom Heomatian faith thus. In *verbis Feudal. facremotes a facremotes, id est, juramenta dicitur, id quis, quem autem rei de quo ambiguerat, legit non falsam, tamen ea, quae res agitur, anima factentia, in quibus illi verba jura, illius nullius, prohibita & innocentia confit. &c. The formal words used by him that makes his law as commonly thence, *Facr. O ye juries, that I do not own this sum of money demanded, neither in me nor any part thereof in manner and form declared &c. help me God, and the contents of this book. To make services or cultums, is nothing else but to perform them. *Old Nat. Breu.* *fol. 14.* to make oath is to take oath. *Cowell, edit.* *1737.*

**Mala.** A male, or post-mail, a bag to carry letters, &c. Id. ib. *Malabatarum. A thief or pirate:* 'Tis mentioned in *Waddington,* *pag. 398.*

**Malderga.** (Albus placitis.) A hill where the people assembled like our affiliates, which by the Scots and Brits are called *Parley-Hills,* Du Cange.

**Maldervitus.** *One who is suspected, who cannot be trusted*; i.e. in *Peto,* *id. rep. 38.* *par. 21.* *Recedet infra appellatio de hinc citate, dem tamen a facratis non fuerit inalecsendus.*

**Maldictum.** (Melodictus.) A curfe, which was of old usuall annexed to donations made to land of churches and religious houses.——Si quis autem (quod non optari), banc nostram donationem infringere temporariam, per missae fit geldii glutinarum foedem, terras torrentium eruciantis consiliis, et permissaque humanae favet, si quis in dignissimis remissa, &c. et permissa remissa. *Chaera Regis Achelbani Monast. de Waltham.* *Anno 933.*
Nothing but Lives and interpreted, but in France they had an extraordinary tax called maltagże, first exacted by Philip the Fair.

Malt, is a formed design of doing mischief to another; it differs from hatred, 2 Lev. 42. In murder, 'tis an aggravation of the crime, and if a man having a malicious intent to kill another, in the execution of his male he kill a person not intended, the male shall be connected to his person, and he shall be adjudged a murderer. Plow. 474. The words ex maliitia praegnanta are necessary to an indictment of murder, &c. See Libelment, Homicide.

Malignant, Signifies the same as to mains any one. Qui ordo etiam occidit vel malignam cumwent etid fie sant relieti off. Lag Hen. 1. cap. 11.

Malo grato, Unwillingly. Libertatem ecceutam quoniam liberi non sunt males, sed magnifici antecessores faci muli grato faciut aliquando, i. e. being unwilling. Matt. Pariz. anno 1245.

Malt. Sent from Huntingdonshire, &c., to London shall be well cleared, 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.

Builis and convulsibles may view malt, 2 & 3 Ed. 6. cap. 10. sect. 4.


The malt-tax imposed, 13 W. 3. cap. 5. 12 Ann. fl. 1. cap. 8. continued annually.

Measure to according to Winchester bushel, 12 Ann. fl. 1. c. 2. sect. 7.

Drawback on exportation, 12 Ann. fl. 1. cap. 2. sect. 23.

Deduction in rent payable in malt, 12 Ann. fl. 1. cap. 2. sect. 25. 33 Geo. 2. c. 7. sect. 19.


Penalty on mixing other corn with malt, 1 Geo. 1. fl. 2. c. 2. sect. 13.

Malt not to be wet on the floor, nor acreished, 6 Geo. 1. c. 21. sect. 1 & 2. repeated 3 Geo. 2. c. 7. sect. 13.

Malt may be mixed with unmal tilled corn for exportation, 6 Geo. 1. cap. 11. f. 4.

Twenty-four hours notice to be given of shipping malt, 6 Geo. 1. c. 21. sect. 6.

Penalty on forcing malt in the cleften, 6 Geo. 1. c. 21. sect. 8.

Juries at quarter-feelions to amend orders appealed from declining to the duties on malt and leather, 6 Geo. 1. c. 21. sect. 10.

Allowance to proprietors of male damaged in barges, &c., 6 Geo. 1. c. 3. f. 35.

Malt for exportation not to be charged, 12 Geo. 1. c. 4. sect. 45.

Allowance on exported malt, 12 Geo. 1. c. 4. sect. 59.

3 Geo. 2. c. 7. sect. 14.

Penalty of mixing malt of different writings, 2 Geo. 2. c. 1. sect. 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.


Malvilles, (from the French malvinnes, malmsey, May perhaps be used in our records for maldencares, or malicious practices, Cowell, edit. 1727.

Malvilles, (fr. mancines vagin, malmex vatum,) The ill highlighted in the passage was called by some reference to as, for flats, &c., for battery of walls. Id. 18.

Malvies paroisses, In Artic. fuper Chart. cap. 10. Are underfould to be such as ufe to pack juries by nomination, or other practice, 2 Lev. f. 561.

Maltum in f. Our law-books make a distinction between malt and male maltum, when malt is maltum prohibited. 332. An offence is laid to be maltum in fe, or unlawful in itself, when it is either against the law of nature, or so far against the publick good, as to be inadmissible at Common law. 2 Hawk. P. C. 389. All offences at Common law generally are male in fe, but playing at dice, and frequenting of taverns, &c., are only male prohibited to certain persons, and at certain times, and not male in fe. 2 Rel. Abr. 355.

Man, (ife of,) French wines, not exceeding 100 tens in one year, may be imported by strangers, 5 Eliz. cap. 5. sect. 46.

Liberty given to import cattle and corn into England, 15 Car. 3. c. 7. sect. 21.

No drawback to be allowed for foreign goods exported to the ifle of Man, 12 Geo. 1. c. 28. sect. 21.

No goods but of the produf of the ifland to be imported from Man, 13 Geo. 1. c. 28. sect. 22.

The Treasury may purchase the ifle of Man, 12 Geo. 1. c. 28. sect. 22.

For carrying into execution a contract made pursuant to 12 Geo. 1. between the commissioners of the Treasury and the Duke and Dutches of Atholl, proprietors of the ifle of Man, and their truflees for the purchase of the fald ifland, 5 Geo. 3. c. 26.

Man, An old woman. We read it in Gjerus of Tilbury, cap. 93.

Managium, (from the French menges, a dwelling or inhabiting,) A manifon-house, or dwelling-place. Cowell, capitale managium cum varia pertinentia, Charis Nie.. of Dalham fine dat. managium syssem Hugonis cum campis adjacente. Mano. Angl. 2 mem. pag. 82.

Manbore, Signifies a recompence for homicide, or a pecuniary com mission to the lord for the slaughter of his vafil. Spelman in his first volume, Cowell. fol. 622. fays, Manbore, i. Compefntia Domino perbfcendo pro hominibus fui occis. Anglium leg. Regi & archiepiscopo tres magna de hominibus eorum prorsus, fol iudicato effe concipit ut com petentia domino etiam laude digna, censit, felicitatem habenda, nec aliis decesserit fide, &c. See Lambird in his Explanation of Saxon words, verbo Æfifinatic, and Æfifinaticus in parte psal. Annal. f. avril. 344. & Bot.

Mant a, Was a square piece of gold, commonly valued at thirty pence; and mancife was as much as a mark of fifteen pence. Coivell's Law's Lexicon., &c., is guarded with the handy. So in the laws of King Ina, cap. 69. Ex affimatione captus viri, qui viscem dam viscerat affini- matur solidus, fubtrahatur 30 solidi ad compendiam domino mortem. But the manca was not always of that value, for sometimes it was valued at five flings, Lh. 1. cap. 69. Manca for solidus aestimatur. But this fling was a sort of money used by the English-Saxons, equal in value to our half-crown: For Thorin, in his Chronicle, tells us, that Mancif a pandius durum solidorum & deexinarium. And with him agrees Du Cange, in verbo Æita Piana, where he says, that twenty mance male fifty flings. For male and mancife are promiscuously used in the old books for the same money. But Spelman and Summer fay, that mancife was equal to our mark. Cowell, edit. 1727.

Mancheife, Its collegiate church, how valuable, 2 Geo. 2. c. 29.

Mantiple, (Mantsip,) A caterer, an officer asently in the Temple, now called The Steward. This officer still remains in colleges in the universities. Cowell.

Manambus, Is a writ commanding the execution of an act, where otherwise justice would be obstructed, or the King's charter neglected, inflicted regularly only in cases relating to the publick and the government, and is therefore
Herein we must observe, that the cases in the books in this last are very debated and contrariwise, that it is only by the prudence of his power correct, not

errors and misnomers, tending to no great peace, happiness or safety, with a moderate consideration, this date, of any manner of pretense for that no sort of matter, whether publick or private, can be committed, but what may be referred to a court of law, 632. 453., 437.

And the court martial is being adjourned, and is

admitted in variety of cases, that if a major, or any person or corporation, having a remittances and the like, be referred to be admitted, or be admitted, he of such a writ in the rest of this word, 409., 632., 1132.

Herein this a paper, that if a major, or any person or corporation, 1132. 110., 1132.

Or in enforcing that publick order, and where there are a number of such a writ in the rest of this word, 409., 632., 1132.

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M A N

So a mandamus hath been granted to aри, clerk, chosen according to the custom, being a temporal office. Slie 457. 2 Sid. 112. 1 East. 145. 3 Mili. 335. Coth. 105.

So a mandamus was lately granted, to admit one Robert Test to the office of a parish-clerk of Ch loophole, being elected by the parish; it being shown that the official had actually admitted to this office. King v. DOD Heathman, official of the City parish of London.

So a mandamus lies for a schoolsmaster, or the officer of a school, if he be elected for life, although he be not a sworn officer; for this is a temporal office, in which the party hath a freehold. 2 Sid. 112. 1 Sid. 450. Stie 457. Coth. 144.

Mandamus to admit, rehearse, or discharge a constable; for he is a public official, and one whole office relates to the administration of justice. 2 Roll. Rep. 82. 1 RId. Ab. 535. 1 Salk. 175.

Mandamus to proceed to office where a chafe for holding over. Stie 555.

Mandamus may be granted to go to an election, tho' there is a mayor of facts. Stran. 1003.

Granted to go to election, notwithstanding a dubious election of facts. Stran. 1157.

Granted to elect corporation officers, where there were wrongful officers in possession. Stran. 1180.

Grant of preemption on the refusal of a judgment for the defendant. Stran. 657.

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 university, to rehearse to degrees. Stran. 557.

To rehearse a schoolsmaster. Stran. 58.

For a parish clerk, sexton, scavenger. Stran. 59.

To swear an ale-taster. Stran. 608.

To swear a director of the amicable 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. Stie 895.

To allow confinables their expenses of carriages for the troops. Stran. 45, 93.

To reimburse a surveyor of highways. Stran. 211.

2. Where mandamus lies to inferior courts and magistrates, 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 rehearse when the party is indited to, and which they have to rehearse to degrees, and which they are enjoined by law to do; and of which there are multitudes of instances, as where the ordinary refuses 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 the being things enjoined by statute, the temporal courts will take care that due obedience is paid to them. Sid. 7, 8. 1 Lex. 180. 1 Sid. 293. Coth. 158, 450.

But a mandamus will not lie to oblige the ordinary to grant administration during minor estate 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 ifships upon unreasonableness, the refusal must be by appeal; or, if in the last instance there be any remedy at Common law, it must be by prohibition. Hill 4 Gr. 2. Smith's case in B. R.

If the tessor makes J. S. his residuary legatee, who by the ecclesiastical law is entitled to administration upon the executor's renunciation; yet if he should refuse, or the spiritual court refuse to admit him thereto, they cannot be compelled by mandamus; for this is a matter purely of ecclesiastical consequence, and out of the statutes; and therefore the party's refusal must be by appeal. Mich. 7 Gr. 2. in E. E. King v. Butterlack.

By the custom of a corporation, &c. a person being an apprentice, there is at the end of his term entitled to his freedom, and the mayor, &c. relate to him if they are capable of compelling them by mandamus; for this is an act of the public justice, which the superior court will see executed. 1 Lev. 151. Tho. Sid. 105. 5 Mili. 402. 6 Mili. 279, 260. Carth. 448.

So it hath been held, that a mandamus lies to the justices of the peace, to oblige them to admit a person to a trial that hath been discharged 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 suggest 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 Mili. 510. Pearl's case, and vide 3 Salk. 572. 6 Mili. 224, 229.

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. Comp. 422, 428.

To a justice of the peace to sign a poor-rate. 5 Mili. 275.

So a mandamus has been granted to oblige justices of the peace to discharge prisoners, pursuant to act of parliament made for the relief of imprisoned debtors. 2 Stat. 74. Comp. 203. Vide 6 Mili. 97-8.

Where by the statutes 13 & 22 Car. 2, for erecting Newgate market, power is given to the mayor and aldermen of London to impanel a jury, who shall assist and advise the coroner and recomence; once shall be given to the owners of the ground; and that the verdict of such jury, on that behalf to be taken, and the judgment of the said mayor and court of aldermen thereupon, and the payment of the money so awarded or adjudged, &c. shall be binding and conclusive to and against all the owners, &c., and there being 15000 feet of the ground of J. S. taken away for this purpose, for which a jury being impanelled, assessed and awarded two thousand 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 Vest. 187. Regm. 214 Anner's case.

And this general jurisdiction and superintendency of the King's Bench over all inferior courts to restrain that within their bounds, and to compel them to execute their jurisdiction, whether such jurisdiction arises from a modern charter, fullbills by custom, or is created by act of parliament, yet being in sub judice jurisdiction, of the law by statute or custom, or variety of instances; as a mandamus granted to the quarter-bailies to give judgment for abating a nuisance.

So a mandamus was granted to the court of Sand with, to give judgment in an assault and battery. Mich. 3 Gr. 1.

So a mandamus was granted to the sheriff's court in London, to give final judgment upon a writ of inquiry. Mich. 7 Gr. 1. Baily v. Bratun.

So a mandamus was granted to the bailiff of Anrewes, to give judgment in a cause there depending; but the court in this case required an affidavit of their refusal, or else it should be presumed that the court would do right. 2 Trin. 19.

So a mandamus was granted to the corporation of Liver pool, to hold an affray for doing the public good, which was making leaves. Mich. 8 Gr. 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 compel 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 fealty at race, an apparitor, &c. to compel them to execute their duty; for there are sufficient or respective courts, and punishable by the judges of them, and the superior court to interpret in obling 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
M A N

he superior court for the execution of such authority; and
therefore where a mandamus is issued to the vice-mayor
of Trinity college, Cambridge, commanding him to ex-
ecute a sentence of deprivation, pronounced by the bishop
of Ely, as visitor of the college, against Dr. Bentley, the
master of that college; and it appearing on the face of
the writ, and as it is directly given to that effect, that
when the writ were visitors, the court held, that no mandamus
would lie; for taking the bishop to be general visitor, as
he writ supposes, is the proper person to carry his
own sentence into execution, having power tantum in capite
juxta venam in mandatis; and if the vice-matter refuses obedience
to his command, the matter is to be proceeded against him
by judgment; or taking the crown to be visitor, the
vice-matter may be punished by commissioners appointed
by the crown; one of which ways the court held to be
the proper one to control the vice-matter to do his
A mandamus lies to deliver up the enrols of an office,
or the papers or records of a publick nature to a
person as a mandamus to deliver the mace, and
other enrols of mayorality to the succeeding mayor,
or a mandamus to a town clerk, to deliver several
books which belonged to the corporation. 1 Sid. 314.
Mad. Comb. 102.
A mandamus obliges corporations to choose pro-
per officers, which if they neglected to do, this by the
Common law was a forfeiture of their charter; and tho'
the charter was not within in year, which was the act of God, and
an ordinary contingency, the court of King's Bench was authorized
to grant a mandamus immediately to fill up the vacancy;
et upon an omission to elect at the charter day, or
upon the removal of an officer unduly chosen, there was no
sentence of deprivation or be judgment; and therefore where a mandamus was granted
to the mayor, &c. of Nortwich, it was moved, that the
fence of the mayor differed from the majority of the corpo-
at. and that he would execute the writ; whereas the
corporation were for returning an excise, &c. and they
prayed, that the mayor might be ordered to deliver the
writ to the relief of the corporation. Sed non allocatur
for he is the head and principal, and take your course
against him. 2 Salk. 432, 701.
If a mandamus be directed to the two bailiffs of a
town to swear in other bailiffs, and they object, that
having swore in those who were regular ones, to some
persons, and that the writ not being directed to them
in their natural capacities, they are not obliged to pay any
obedience thereto; the court notwithstanding obliged
them to return the writ; for if the persons sworn in by
them had no reason to be cheford, they fill continue bal-
ilf, and ought to obey the King's writ. 4 Mod. 133.
The King v. The Town of Chichester.
But where a mandamus was directed to the church-
wardens of W. to relieve A. to the office of sexton, and
served upon the late churchwarden, after their office was
expired; and the court upon information, upon an
affirmation, Swart. 624.
and the fact of that the last writ not being directed to the
persons, that the court allowed a good reason for their not returning
the writ, that at the time of the writ delivered to
them were not churchwardens. Trin. 5 G. 2. in B. E.
The King v. Churchwardens of Wrexham.
A mandamus to the mayor, aldermen and capital bur-
gesses of D. viz. Whereas A. and B. &c. removed the
party complaining from his office of burgess, comman-
ding them to command A. and B. to relieve him, was
quashed, for that it is absurd, that the writ should be di-
rected to one person to command another. 2 Salk. 436.
The Queen v. The Mayor, &c. of Derby.
The writ is to be returned by him to whom it 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 in all other offers, for which the court will
grant an attachment. Slim. 368. Carth. 500.
Comb. 422. 2 Show. 505.
If a mandamus be directed to the mayor, &c. and
the mayor, who is the most principal and proper person, re-
turns and brings in the writ; the court upon affidavits
will not examine, whether the return is that of a mayor,
but will receive it, and leave the parties to punish the
mayor for the misdemeanor, if he be guilty; but a peremptory mandamus will be granted, if the re-
turn be falsified. Carth. 500. The King v. Mayor.
5 K.
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Ex. of Abingdon. 2 Salt. 431. S. C. and leave given by the court to file an information against the mayor.

4. Of infusing deleterious to the writs, compelling a return, and what shall be deemed a good return.

On every mandamus there regularly issues an alias and pluries, to oblige the party to return the writ; but the court of King's Bench may make a peremptory rule to return it in effe; and in case of disobedience grant an attachment; also by the statutes 9 Ann. and 11 Geo. 1. Persons, who by law required to make returns to mandamus, in such cases as are within the statute, must make their return to the first writ of mandamus. 2 Salt. 432, 433, 6 Mod. 25. 6 Sim. 669.

An attachment issues for not returning a mandamus and the sheriff, who is to serve the process, takes bail thereupon, this is such a misdemeanor, for which an attachment will be granted against him; for these are no like attachments in Chancery, for want of an infirmer, which are only as attachments of process, but are writs on contempt in nature of executions, and not so bailable by the sheriff. Mich. 9 Geo. 2. The King v. Balfiverly, 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 to one, it is held that the court may admit a return by two electors; and in such cases as are within the statute, all before put up as in contempt, and laid by the heels till they do agree. 6 Mod. 152.

As every mandamus issues upon a foppapal of some breach and disobedience of the law, or neglect of the party's duty to do it, it is directed, the return thereto must be certain to every respect; and therefore it is said, not to be sufficient to offer 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 answerable to law or not. 1 Salt. 432. 3 Vent. 111.

Therefore, if a mandamus to the Lord President and Council of the Marches, to admit a person to the exercise of the office of deputy secretary, the return is, non fuit tempore receptionis brevis deputatus constatit; 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. Clapham.

To a mandamus to admit a person 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 certain; and therefore if the return admits a good election, and afterward avoid it by matter repugnant, this is naught. 2 Salt. 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 fued 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 chafe. 6 Mod. 359.

A mandamus was granted to rehear the recorder of Barnstaple, directed to the mayor of the corporation; and he returned, quod neminem noti, that he was ever elected; and the return adjudged insufficient, and the refutation awarded. Rom. 153.

So where to a mandamus, to rehear a town clerk, it was returned, that he nuncupam debitis modo admissus; and it was held a bad return, being a negative præsumptio, and irrelevant matter, when the plain fact only should be returned, so as to enable the court to adjudge upon it, and the party to bring his action, in case it were fale. 1 Sid. 209. 1 Kb. 6557, 716, 733.

But if the mandamus haggis, that he was debitis electus, a return not nec fals, debitis electus is good, because it answers to the writ. Carth. 175. Lambert's cafe. 2 Salt. 433. 5 Mod. 11. S. P. 1

5. Of Cross-jury, 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 interplead, which is one reason why the utmost sum of money was required in such return. 1 Vent. 111. 2 Salt. 412.

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 mayor, bailiffs, port-revees, and other offices within cities, towns corporations, or boroughs, the grand fentence is, where it is held, that a return shall be made thereunto, it shall and may be lawful to and for the person or persons, fusing or protracting such writs of mandamus, to plead to or traverse or any the material facts contained within the said return, to which the person or persons making such return therewith, or in such proceeding or proceedings, and in such manner shall be held therein, for such determination thereof, as might have been had if the person or persons, fusing such writ, had brought his or their action on the cause for a false return; and if an issue that may be joined on such proceeding, the party or persons, fusing or procuring such return, may or may not try the same, or any the material facts contained within the said return, to which the person or persons making such return therewith, or in such proceeding or proceedings, and in such manner shall be held therein, for such determination thereof, as might have been had if the person or persons, fusing such writ, or judgment given for him or them on demurrer, or nisi dictum, or for want of a replication, or other pleading be 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 cause as aforesaid; such costs and damage to be levied by captas ad satisfaciendum, fieri facias, and a peremptory writ of mandamus shall be granted, or any other writ, and the person or persons, fusing such writ shall be given, as might have been, if such return had been adjudged insufficient; and in case judgment that be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid. It is clearly agreed, that for such return, or judgment, as is held, that for a false return to a man damno an action on the cause lies; as if upon a mandama to rehear T. S. to his place of burghs of P. the mayor &c. return a good cause, the matter of which is false an action lies for the false return. 11 Cr. 99. Egg cafe.

If it hath been adjudged, that where the return made by several persons, the action may be either joined 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 other party, the plaintiff may have his action. Carth. 175. 12. Sir Peter Kibb v. Pilkington, Lord Mayor of London. 6 Mod. 152. S. P.

Also if the matter concerns publick government, as no particular person is so far interested, as to maintain an action, the court will grant an information against the mayor. 14 Mod. 63. Scan. the return is 2 Salt. 374.

If the return be insufficient, or falsified in an action on the cause, the court regularly grants a peremptory mandamus, either to admit, rehear or discharge, &c. the party, as the case requires. 11 Cr. 99.

But the action which falsifies the return, is to be brought in that court out of which the mandamus issue.
and therefore where in an action on the cause in C. B. for a false return to a mandamus, judgment was given for the plaintiff on demurrer; yet the court of B. R. refused a deman-

datory mandamus; because every mandamus recites the fact pretens nis facti per recordatum, which cannot be

daid in this case, as the court cannot take notice of the


S. C. 3. 1. the grant on this subject, 3 B. Abr. 254.

To Brompton, 4 Cit. 681. 670.

Mandamus, Was also a writ that lay after the year and

day, in which the time the writ called Dian

east extremum had not been sent out to the eclairo,

commanding him to inquire of what lands held by

judicial service the tenant his lord, which was called

flagrante delito. And where, when they commemorate and

perform the commands of our Saviour, in washing the feet of

him, &c. as our Kings of England have long prac-
ticed the good old custom on this day of washing the

feet of the poor men, in number equal to the years of

their reign, and giving them shoes, stockings and money.

Mandate, Leave or bread given to the poor on

Maundy Thursday. Id. ib.

Mantenet, Was anciently used for tenant, or tenants,

2cic, Synodal, apud Cleveleo, Ann. 820. qui in fei alien

ament; and it was not lawful for them or their chil-

dren to depart without leave of the lord.

Mangonare, To buy in the market. Si venient ad

mercatorium qui manegant in capiis &buiuess. Leg. Ecel-
ed. apud Brompton, cap. 24.

Maguellus, A warlike instrument made to call

all men against the walls of a castle. Cowell, ed. 1727.

Maturipus, Was a handkerchief which the priest

always had in his left-hand. Id. ib.

Manner, (from the Fr. maner, or mainer, i.e. manu-

rators.) To be taken with the manner, is where a

chief having stolen any thing, is taken with the same

fame thing which is called the fragrante delito, S. P. C. 170.

Such a criminal is not

by law; And anciently, if one guilty of felony or
cracy had been freely purified, and taken with the

manner, and the goods to found upon him had been

brought into court with him, he might be indicted

immediately, without any appeal or indulgence; and this is to

be left to the proper method of proceeding in such

matters which had the franchise of infangthefe, H. P. C.


Maning, (Manegera.) A day's work of a man; in

some ancien laws there is a relation of to much rent,

and so many manings. Cowell, edit. 1727.

Mansire, Is one who is cited to appear in court, and

stand to the judgment there. It differs from bannire:

for though both signify a citation, yet one is a citation

by the adversary, and the other by the judge. Leg. H. 2.

cap. 5. 2.

Manopos, (Manegera.) Goods taken in the hands

of an apprehended thief. Cowell, edit. 1727.

Manus, A horse, a pad or saddle horse. In the

laws of Alfred, we find man-thief, for a horse-thief. Cowell,
ed. 1727.

Mans, (Mansierum,) Seems to be derived from the Fr.

mancer, habitatus, or rather from manes, of abiding

there, because the lord did usually reside there. 35 se-
duen noblie partum sejus (quae tenuerat observat.) quia

certainly by general consent the lands of the Manor in

jurisdiction called in sejus, &c. concerning

Mans, Venantios concordantur, terras dominas tenentes,

quia dominu referuantur dominicale. Tutam esse domini

dominium appelleratur, idem baron, unde curia quae huc

jurisdictionem habet curia baronis namen revinit.

Stone de tur, mandamus, a judicial writ issued called

manerium quiet manerium, because it is laboured by handy-work; It is a

noble fort of fee granted partly to tenants for certain ser-

vices to be performed, and partly referred to the use of his

family, with jurisdiction over his tenants for their

farms. That which was granted out to tenants, we call

tenementals; that referred to the use of his family, the

whole fee was termed a lordship, of old a banbury; from

whence the court, that is always an appendant to the

manor, is called The court banor. Touching the ori-

inal of the manor, it seems that in the beginning there was

east ground granted by the King to some baron or man of

worth, for him and his heirs to dwell upon, and to exercise

some jurisdiction more or less within that compass, as he thought good to grant,

performing such services, and paying such yearly rent for

the same, as lie by his grant required; and that after-

wards this grant was parcelled to his tenants,

men, enjoining them such services and rents as he thought

good, and so as he became tenant to the King, the interiors

became tenants to him. See Peru's Reformations 670,

and Hurd's Mirror of Jusitices, lib. 1. cap. De Roy Alfred,

and Fulleck, 2. cap. 1. According to this our custom,

all lands held in fee throughout the island belong to

feiffs and arriere-feiffs, whereas the former are such as

are immediately granted by the King; the second, as the

King's feudatories do again grant to others. Grec-

guri Synag. lib. 6. cap. 5. num. 3.

In these days a

manor rather signifies the jurisdiction and property in-

ternal, than the land or fite. 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, Kitchen, fol. 4. Bract. lib. 4. cap. 31. num. 2. dividitum meum

capite et num capite. In these days a

manor may be

compounded of divers things, as of a house, arable land,

pallure, meadow, wood, rent, advowson, court-baron,

and such like; and this ought to be by long continuance

of time, beyond the memory of men; and a manor at

day a manor cannot be made, because a court-baron cannot

be made, and a manor cannot be without a court-baron,

and sefiores or freeholders, two at the leaf; for if all the

freeholders, except one, echieft to the lord, or if he pur-

chase all except one, there his manor is gone contra

 juris. in a common in a year is vacated.

Cowell, edit. 1727. See Coppole, and 15 Vin. 12.

Manor. Manuæ, (vel manfa). An habitation or farm:

Alfo an hide of land; and the polliffors of such were called

manentes. See Saxon.

Manor, A baddow. Cowell, edit. 1727.

Manufa, (Manuæ, A manuario, according to the de-

nition of Bracton, lib. 5. cap. 28. num. 1. Is a dwell-

ing consisting of one or more houses. It is most com-

monly taken for the lord's chief dwelling-houfe within

his fees, otherwise called the capital manufa, or chief ma-

nor-place. Bracton, lib. 2. cap. 26. Manifon, amongst

the ancient Romans, was a place appointed for the lod-

ging of the Prince, or soldiers in their journey; and in

this sense we read primum manifacem, &c. It is probable

that this word manifon both in some conftitution signified

so much land as Rome called familiae in his calligraphic

History. For Lombard, in his Explanation of Saxon

Words, verb. Hida terra faith, that that which he

called familia, others since called manemem vel man-

fam. Manufa & manfam, you may read in the Finifhli,


the charter granted by King Kenulfus to Ruchi, Abbott of

Wasgih.
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ANGEN, and mentioned by Sir Edward Coke in his Report De Juris Regni Ecclesiasticis, seems to signify a certain quantity of land. Hata vel manua. Man, Wetem, in Anno 857. manu in a charter of Edward Conf. it is written manua. Vide Hist. of Pauls, fol. 189. BLackton, lib. 5. tr. 5. par. 1. Manua est poteris confinutia ex pluribus domibus vel una, quae erit subastata una & jusa finis vicino, etiam & id allo manua si vicinitas non erit vulva, quae villa off ex pluribus manuibus vicini et colorem ex pluribus vicini. Videlib. ut cap. 51. Sometimes manuae forms a family, as Terram 50 manuiones, Uc. concilium Clunieht, anno 800. But that which in ancient Latin authors was called bida, was afterwards called manua, i.e. as much land as one plough could till in a year.

Cowell, edit. 1727.

Manufaet. (Hosidicium) is the unlawful killing of a man, without a premeditated malice. As when two that formerly meant no harm one to another meet together, and upon some sudden occasion falling out, one the other, H. Hist. part. 2. Syllisy. tit. Indictments, sect. 44. It differs from murder, because it is not done with a premeditated malice: And from chancerymel, because it hath a present intent to kill. And this is felony, but admitted to the benefit of clergy for the full time. Staund. pl. cor. lib. 1. cap. 9. and Bracton, cap. 9. yet it is confounded with murder in the statute, Anno 28 Ed. 3. ch. 2. tit. Habeas.

Manntum capitale. The chief manua, or manor-house, or court of the Lord. Cowell, edit. 1727.

Manuta and Mafura, Are used in Demiflay and other ancient records, for Manuiones vel habitation villarum. Cowell, edit. 1727.

Manto, Anciently a farm. Selden’s Hist. of Titlers, pg. 62.

Manus presbyteri. The manua or house of residence of the parish priest; the parsonage or vicarage house. Persch. Antig. p. 431.

Mannta beneficia. The daily distributions, or portion of meat and drink allotted to the canons and other members of cathedral churches for their present subsistence. Cowell, edit. 1727.

Manntus obtrinctor. Sworn obedience, or submission upon oath. Cowell, edit. 1727.

Manupraet. It is a word that means, for a man who has been taken in the delusion of felony, and offering sufficient bail for his appearance, cannot be admitted thereto by the sheriff, or other having power to let to mainprie. P. N. B. fol. 299. See Manprie.

How diversly it is used, see the Reg. Origin. in the table, and Priscus’s Animadversiones, fol. 209. 18.

Manuel. (Manuelli.) Any thing whereof present profit may be made, or that is employed or used by the hand. Staund. Provs. fol. 54. As a thing in the manoel occupation of one, that is, actually used or employed by him. Cowell, edit. 1727.

Manuel, Certain wrought ware prohibited to be imported, 3 Ed. 4. c. 4. § El. c. 7. 10 Anm. c. 19. sect. 167.

Manufactures may be imported from Ireland, 3 Ed. 4. c. 4. sect. 3.

Matters of crafts and magistrates of cities may search manufactures, 3 Ed. 4. c. 4. sect. 4.

Certain manufactures 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 bone-lace, cut work, embroidery, fringe, band-things, buttons and needlework, prohibited to be imported and sold, 13 & 14 Car. 2. c. 13. § 9 to 10 El. 3. c. 9.

Repeated from the taking off the prohibition of the woolen manufactures in Flandres, 11 & 12 W. 3. c. 3.

Foreign wool-cards, card-wire and iron-wire not to be imported, 13 & 14 Car. 2. c. 15. 4.

All persons may work in manufactories of hemp or flax, or tapelary, 15 Car. 2. c. 15.

Against frauds in the manufacturies of woolen, linen and iron, 1 Ann. J. 3. c. 18. 13 Gen. 2. c. 8.

Wages to be paid in money, 1 Ann. J. 3. c. 18. 6. 10 Ann. c. 16. f. 6. 13 Gen. 2. c. 8. f. 6.

Regulations to prevent frauds by manufactories in woolen, linen or iron, 13 Gen. 2. c. 8. sect. 4.

Manufacturers in leather shall be paid their wages in money, 13 Gen. 2. c. 8. sect. 6.

Regulations of the manufacturies in woolen, linen, iron, leather, &c. and for the payment of their wages, 32 Geo. 2. c. 8. sect. 6.

Penalty on reducing manufacturies out of the kingdom, 23 Geo. 2. c. 13.

Penalty on exporting utensils of the silk and woolen manufacturies, 23 Geo. 2. c. 13. sect. 2.

Penalty on captains of ships prohibiting tools to be put on board, 23 Geo. 2. c. 13. sect. 5.

Penalty of signing coupons for exporting tools, 23 Geo. 2. c. 13. sect. 6.

Manufaet. (Manufaet.) Is the freeing of a villian or five out of his bondage: The form of it, in the Conqueror’s time, Landoram in his Arthab. fol. 168. divers formeth in these words, St quis velit jamsum faurn liberum facere, tradat eum comiti cum, per manum decuman in pleve convitata, & quieter a silam foro est ob justa potestate manuam solam dominion. & tendat ei librum foras & vias, & tradat ei libera arma, fulcisc lances & gildium, & acide lince boho express. Some also went to be manumitted by charter. Vide Broke, tit. Vellenger. fol. 325. The terms of the law make two kind of manumission, one specific, the other described. Some when the lord makes a deed to his villain, to infranchise him by this word manumittit, 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 thereafter all he doeth by his own hand shall be as lawful as if done by his own hand or by one of his family. Giff. in s. Scriptor. See. Some manufaet signifies a domeniek: Si manuflaet aliquis accequetur de forta. Leg. H. c. cap. 66.


Manus. Was anciently used for an oath, and for him that took it, a compurgator; as we often find in old records, Tertia, quarta, decima manu jurare; that is, party was to bring to many to swear with him, that the believed what he vouched was true; if he be sore alone, he was proper man & unica. So in the visitation of the diocese of London by Rob. Wincebe, archbishop of Canterbury, a woman of Coggehale in Esefex accused of adultery—Malieri loc negati: pargato juxta manu estuit in dileta, i.e. she was to vindicate her reputation upon the testimony of six compurgators. Reg. Eich. Christ Cant. 7. innume luminices, Men of mean condition, of the lowest degree,—Et plures meo dam manus quis e juxta & rationalitibus casse Rex potest exsustavit. Radulphus de Diceto fab anno 1112. Inferiores & innume manus bona. Idem fab anno 1138.

Manufaet. Is a writ used in case of manufacture Reg. Orig. fol. 182 & 189. See Maintenance.

Manworth. The price or value of a man’s life; and for of every man is rated at a certain price according to his quality, which price was paid to the lord in satisfaction for killing him. Cowell, edit. 1727.

Mar. is now thirteen thillings and four-pence; but in the reign of Henry I. it was only six thillings and a penny in weight, for the thillings as well as pence were coined by weight by the king himself, and not cut and edge, and some only cut in small pieces. Now those that were coined were worth something more than the other. De tabula nummis is written debito redd. *C. 30 & *S. ad mancipium, idem hodie 5 marcas de libri, id. quam 120 f. qui faciunt 20 marcas. * pagination.

March. The rent of a mark by the year. *Ann. 11. tom. pag. 341.

March (Earldom of) Grants of its lands are to be under the Great seal, 4 Hen. 7. c. 14.

Marchers, or L. 200. marchers. Were the men who lived on the marchers of Wales or Scotland, who in times past (according to Camden) had their private laws, *spectatorem vitæ & necis, like petty Kings, which now abolished by the statute 27 H. 8. cap. 20. Of these marchers, you may read Anns 11. 4. c. 18. 17. 8. &c. 29 Ed. 4. cap. 19. where they are called Lords marchers. And in old records the Lords marchers of Wales were called Marchiones de marchis Walliae. See Paroch. Wales.

Marches (Marchia, from the Saxon mars, signum immanum) Are the bounds and limits between us and France and Scotland; and because they are divided into east and middle marches. Stat. 24 Hen. 8. c. 9. *H. 9. cap. 7. and 21 Ed. 4. cap. 8. The word is fed in the statute 25 Hen. 8. c. 12. generally for the receiving of the King's dominions. *Cowell, edit. 1727.

Marcher (Marchionum) Conuocatioa securitaria in mancipia marchi, lader. *Lib. 2. tit. 1. cap. 8.*- 2. Marcherum vero pro filia dare non potest illa. *lib. 2. cap. 9. 2. *Extensa Maneri de Wivelinc, 13 Dec. 40 *dw. 3. & alia 13 Ed. Anno 1230. *Rich. bar. tenet omnem manxagiam. *E. debter tellagiam, solidum vero & mercatus ibidem, quod si marceri valeur sit fiam sam quam liberis homin extra universa, fecit peces, quem pro marceria, & si eam marceri timeat aliquis eum non tollatur, licit debere. Mercatum, hic est, quod chanceller, & notari debere solvere pro filiibus suis facerent se de iniurias, 5. 4. 6. *Reg. Abbat. de Bargo, in the statute with some difference, is in divers parts of England and Wales; to which are added in the island of Guernsey. See Speelman at large on it, by the custom of the manor of Dinove, in the county of Caermarthen, every tenant at the marriage of his son gives ten thillings to the lord, which in the Brithish language is called Marcher, 2. 5. A maid's dower, or the custom for the lord to lie the night with the bride of his tenant was very common in Scotland, and in the north parts of England; But it was abrogated by Malcolm the Third, at the instance of the Queen; and thereof a mark was paid to the lord by the undermentioned.

Marche, To adjoin or border upon. *Cowell, edit. 1727.

Marchitus, A hammer, a mallet. *Id. 18.

March. See Horses.

March. See Marshal.

Marchettum, (from the Fr. morte, a fen or marsh) Marsh ground, which the fen or great rivers overflow. *L. Ed. 12. pag. 120.

Marinarium, A marine, a seaman. *Marinarii rurium, the admirals or wardens of the ports, which were commonly united in the same person; the word admiral not coming into use before the latter end of King Edw. 1. before which time the King's letters with seals annexed to them were captaines marinariarum & eftten marinaria felicet. *Paroch. Antiq. pag. 322.

Marchi, See Scraen.

Marchius, Is a word used in Dominiag-Boch, and signifies palms, or locust pellucida, a marshy or fenny ground, Vol. II. N°. 105.

Marriage angellis per defalcatum. Is a writ for the tenant in frank-marcery, to recover lands, &c. where of he is deforced by another. *Marriageum, That portion which is given with a daughter in marriage. See Glaucia. *In alla mites acceptum de femendo legis Romanae, femundum quos propria appella- tur, id, quod eum muliere deberet vover, sed ungariter dicitur adhibere. *Editor majorum. Marriage in, or marriage, illecdy 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 privilege which accrued to the lord by the marriage of his heir under age, who led his lands of him by knight's service. This great right is in the statute of Morton, cap. 7. *Marriageum ejus qui infra estatiam eff de vero juris prae- titum ad dominium feud. *Marriageul habere, To have the free disposal of an heir in marriage, a favour granted by the Kings of England, while they had the custody of all wards or heirs in minority. *Cowell, edit. 1727.

Maritima Anglicia, The emolument arising to the King from the fees, which formerly anciently collected; but was afterwards granted to the admiral. *Pat. 8 Hen. 3. m. 4. Richardsus de Lucy dictur habere mariitima Angiinum.

March, (Meara, from the Sax. moere, i. e. jignum) In ancient times we find mark of gold was eight ounces. *Stead's Annals, pag. 32. and was valued at 67. in silver. *Rot. Mag. pise de anno 1 Hen. 2. or, as others write, 61. 131. 4. *Char. Reg. 26 f. de best B. Regina (quon- danae us. R. 18. 12. 13 & 3.) *F. m. 17. n. 31. *Apparitumus et pro dita suo mile mercurum in argentum, 131. 4. computatis pro marce. See Marcha. *This in certain when it first came fixed to this particular value. *Matthewus Paris tells us, that it was so early as the year 1194, in the life of Guerinum, abbot of St. Alban's. *Stow de Sig. sign, *Mark, faith, that in Vindicia de poenitentia & libertate, a mark signifies an ounce weight or half a pound, whereas the dram is the eighth part of a mark, or the ounce is the eighth part of a mark, citing Cajianus de Conjectur. *Dug. *Bub. bishop. fact. 7. *verb. *Sizu Tur- nan. A mark of silver is now 131. 4. *Cowell, edit. 1727.

Mark. (Mercatus) Signifieth with us mercifour, and also the liberty or privilege whereof a town is enabled to keep a market. *Old Nat. *Brev. f. 149. So both *Bradten ufe it, *ib. 2. cap. 23. *nat. 6. & *ib. 4. cap. 40. whereof there is the use of another market ought to be dillant from another *See loco init. *Mark and sections partem dividitur. The reason whereof both he and Festa give in their words, *Quia annis rationabilis dierum quae sunt ex 20 millisimois. *Dinoviarum ergo dicta in tera partes, prima autem motu multum deum multum cursor mercatus, *Le- cendia dicta a primam nihil detur a d. *et verum dicta, que quodam se- bene deum ambiant et satis forte mercatus, qui mercex depenfierunt & censurierunt valedes, quibus necessitas erit pravitus mora in mercatu, & tertia pars reiwm reduntibus merceo mercatu ad proprius. *Lib. 4. cop. 28. *fac. Item refer. By the statute 27 H. 6. 5. all fairs and markets are forbidden to be kept upon any Sunday, or upon the feasts of the Assumption of our Lord, Corpus Chrisii, or the Assumption of our Blessed Lady, or Sainte of 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 Sundvys; and in many places and counties, in the churchyard. This custom so far 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 Albi. *París. Anno 1200. *Nominae vocabulum in praeceptum, dicitur interdictum quod omnia que dicta dominium pro dignis futur conferentur, *See Fairs and markets, and 15 Fez. *cap. 106. Markets.

Market, Penalty on persons living in the country, and selling by retail in market- towns, 1 & 2 *Pell. 3. & *ib. 31. *Worfield excepted as to wood and yarn, 18 Ed. c. 21. 5 L
M A R

Market-choor, or Market-gley, Toll of the market. Gwelv, ed. 1727.

Market鳄, Every inhabitant at Malton, who had pipes or gutters laid out of their houses into the fleeter, paid one penny. Hill, 15 Ed. 1. Phillips of Yorkshire.

Marlborough, The honour of Woodstock granted to the Duke of Marlborough in reward of the victory at Blenheim, &c. 3 & 4 Ann. c. 2. The Act, chap. 5. c. 3. An annuity from the post-office settled on the Duke of Marlborough, 5 Ann. c. 4. For paying the arrears due for building Blenheim house, 1 Gen. 1. f. 1. c. 12. sect. 34.

Marl, (Marla,) A kind of earth or mineral, which may be a useful addition to this kingdom, cast upon their land to make it more fertile. It is also called main. 17 Ed. 4. cap. 4.

Marlborough, Statutes made there, 52 Hen. 3.

Marlwaem, or Marlwem, A marl-pit. Gwelv, ed. 1727.

Marquis, (from the Saxon marce, fagum.) We use the word in the same fense to this day, when we say, Give such a thing a mark or sign; but in our ancient fatures it signifies as much as reprisals, as in flat. 4 H. 5. cap. 7. where marque and reprifals are used as synonymous; and letters of marque are found in the fame fignification in the following Act, Gwelv, ed. 1727. c. 3.

The law of marque in what cases to be used, 27 Ed. 3. f. 2. c. 17. Letters of request and letters of marque shall be granted by the Chancellor to those that are griev'd against trucce, 4 Hen. 5. c. 7. To be granted for goods taken by the subjects of Denmark, 10 Hen. 6. c. 3. Goods taken on board enemies ships to be lawful prize, though belonging to foreigners in amity, 14 Hen. 6. c. 7. See Reprifal.

Marquis, or Marquifs, (Marbhs,) Is now a title of honour next before an Earl, and next after a Duke; by the opinion of Hatzman, verb. Marquis in verbis Prae- dalibus, the name is derived from the German march, i. limet, signifying originally as much as cugis limitis, or comes & prefectus limitis. It was an ancient custom among the Britains, and after them of the Saxons, to give the title of Regal to all lords that had the charge and curtesy of marches and limitis. See Selden's More Clavf. lib. 2. cap. 19. From hence it was, that in the time of Richard the Second came up first the title of Marquifey, which is a governor of the marches; for before that time, those that governed the marches, were called commonly Lords Marchers, and not Marquifs, as Judge Dolgerie hath observed in his Law of Nobility and Peerage, under the title of Marquifey, pag. 21. Marchions Wallis, viz. Regers of Maroiv Marz, Jacobis de Andale, Regers de Clifford, Regers de Lefterham, Hans Extravers & ille de Turkvercum, con pluribus altis, qui de bello praedidit de Leces super fugerant, &c. Mart. Welteff. in anno 1624. pag. 2129.

Marrow, Was a lawyer of great account in Henry VIII's days, whose learned readings are extant, but not in print. Lamb. Eivenarch. lib. 1. cap. 10.

Marriage, (Marriage,) Signifies not only the lawful conjunction of man and wife, but also the interest of bestowing a ward or a widow in marriage. Magma Chirch. Lib. 2. cap. 13. and also it signifies lands given in marriage. Bradt, lib. 2. c. 34. 35. Gwelv.

Marriage is a compact between a man and a woman for the procuration and education of children; or an exchange of mutual vows, performed in the presence of God, and with proper ceremonies; and seems to have been first instituted as necessary to the very being of human society; for without the division of families, there can be no encouragement to industry, nor any foundation for the care of acquiring riches; and therefore all well-ordered societies have settled the solemnities of marriage, and ordained the rites, by which it should continue during life; and the reason is, because children gradually arriving one after another, they have hardly done with the care of their education, till the parents are unfit for second marriages; and therefore it is convenient that marriages should continue during life, that the mutual care of the 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 ever after the concern of education was over. Besides, the interest of marriage could not be conveniently prosecuted under a prospect that the marriage was any otherwise to be determined but by death only; for each person would be injuriously drawing out of the common stock, to the injury of their joint concern, and to the prejudice of the education of their off-spring; besides that, if a joint interest cannot be well and commodiously carried on without a mutual friendship and endearment, which must be hiev'd and destroyed by the prospect, that the contract might be determined by the humour of either party. Hence it is, that fucceffion and all other heirs are unlawful, because children are begotten without any care or preparation for their education; and the crime of murder receives this further aggravation, that it not only instails a furious race on the party, for whom he is under obligation to provide, but likewise defpers that peace and mutual endearment which ought always to subsist in the marriage state. 3 Bost. 569.

1. What persons may marry within the Levitical degree?

2. Of espousals and marriage-contracts; and of the solemnization and ceremonies requisite to a complete marriage.

3. Of the offence of a forcible marriage, and marrying an infant female under the age of 16, without consent of guardians.

1. What persons may marry within the Levitical degree.

Herein first, we must take notice of the fature; 32 Ill. c. 38. by which it is enacted, " That no refervation or prohibition, (God's law excepted,) the trouble or impeach any marriage without the Levitical degrees; and that no perfon, of what effate, degree or condition ever he be, shall be admitted by any of her fpecies, to marry within the King's realm, or any of his great and other lands and dominions, to any procès, plea or all gation contrary to the fature."

Since this statute, it hath been clearly agreed, that the Spiritual court proceeds to impeach or diffolve a marriage out of the Levitical degrees, that then the Tit法人 cannot inhibit them; for by that statutes, marriages, that are out of those degrees, are declared to be good and lawful; and therefore, if the Spiritual court fentence persons in doing that which is declared lawful to be done by the statutes of the realm, they are by Temporal courts to be prohibited, because they execute a prohibition, thus bounded by the Temporal law, but where the law has not bounded them, their jurifdiction continues; and therefore within the Levitical degrees they are still judges of incest. Vaughan, 206, 69.

We muft likewise obverse, that if a perfon marry cousin within the Levitical degrees, yet they continue husband and wife, till a sentence of divorce be pronounced. 1 Rot. Alr. 340, 357. Vaughan, 208, 250.

The degrees prohibited by the Levitical law, are so as are said to be against the law of nature, and such are against the divine positive law.

Those against the law of nature, are all marriages between the ascending and descending line in infinitum; as this is said to be contrary to the law of nature, because it tends to the destruction of the natural will of the creator, which defigned the preservation and continuance of such inhabitants of the world as he originally created and all acts of men that tend to the destruction of the species are against the law of nature. An innocent person, is said to be against the law of nature; and therefore incest, 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 educated and preferred their male issue, if it were possible to hazard their children by them. Thence..."
Mar

To another reason why this is called unnatural, and
is because it deferts the natural duties between parents
and children; for the parent could never preface or main-
dul that authority which is necessary for the education and
womtenent of his child; nor the child that reverence
that is due to the parent in order to be educated and
avored, if such indirect familiarities were admitted.

The close prohibited by the positive Divine law, are all
allotars to the third degree; and tho' this be not inclu-
to the law of nature, yet it seems established on
strong reasons; for if a concourse between blood
sisters might be allowed, or their marriages be toler-
ished, the necessity is there that the frequent consanguineous marriages they have with
such other, would fill every family with lowness, and
rate heart-burnings and unextinguishable jealousies between
brothers and sisters, where the family was num-
us; and it would confine every family to itself, and
put them in the education of children less parental; and
y consequence it was necessary to propagate the fame re-
rence of blood in such near degrees; and the uncle
ight have the fame regard and command as a father,
ad a niece the fame duty as a daughter; it was also ne-
cessary, in order to perfect the union of marriage, that
husband should take the wife's relations in the fame degree,
to be the fame as his own without distinction, nd so vice versa; if for they are to be the fame perfon as
as intended by the law of God, they can have no dif-
rance in relations; and by consequence, the pro-
hibition touching affinity must be carried as far as the pro-
hibition touching consanguinity, according to the text,
8th cap. Levit. ver. 16. The nakedness of the brother's
wife that thou not uncover thee; it is thy brother's
akedness.

The law in Leviticus, cap. 18. ver. 6. in. That none
if thou shall approach to take a wife to her father's son, un-
their nakedness, which words being general, must
understood and expounded by the examples from the 9th to the 20th ver.: among which we find many pro-
bitions to collateral in the third degree, both in affinity and
confanguinity; but there is no example of collateral in the
fourth degree, either in affinity or confanguinity; and
therefore the law of marriage opens to relations in
the fourth degree; and the Jewish lawyers, in computing
their degrees, computed them according to the natural
order of things; that is, from the praesulis up to the
common flock, and so down to the other relations; which
is the fair and natural order of computing proxim-
ity; and in this order of computation, cousin-germans
are held to be of the fourth degree, and to have liberty
to marry. Sed. Ud. Hebri. lib. i. cap. 4.

This likewise is the ancient fence of the Christian
church, and even the church of Rome in the time of
Pope, and the free church of other states, which words being general, must
be understood and expounded by the examples from the 9th to the 20th ver.; among which we find many pro-
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are held to be of the fourth degree, and to have liberty
to marry. Sed. Ud. Hebri. lib. i. cap. 4.
cannot be intended of a baftard, because he is of kin to no person whatsoever, &c. But the court inclined not to grant a prohibition. 5 Mod. 168. Crouch, 356.

Helen v. Tifftet.

2. Of ephsals and marriage contracts; and of the fo-

mulation and ceremonies requisite to a complete marriage.

Swinburne defines ephsals in this manner, sionuffling sunt

vestia repermepmissae nuptiarum inter ess, quinque bare facit,

falsa; which comprehends all, That this promise must be

mutual; 2dly, That it must be done rite, or duly; 3dly,

that it must be entered into by them who may

lawfully marry. Swinburne of Ephsals, fol. 11.

Such contracts are divided into contracts in present,

and contracts in future.

A contract in present, or verbis in presenti, as I marry

you, you and I are man and woman, &c. is by the Civil

law termed ipsam matremiam, and amounts to an ac-

tual marriage; which the very parties themselves cannot
dismiss by release, or other mutual agreement; it being

as much a marriage in the fight of God, as if it had been

in facie ecclesiae, with this difference, that if they exa-

minate before marriage in facie ecclesiae, they are for that

punishable by ecclesiastical censures; and if after such con-

tract either of them lies with another, they will punish

such offender as an adulterer. 5 Swab. 74. 2 Salk. 435.

A contract in future, as I will marry you, &c. may be

enforced in the spiritual court, but such contract either

partly in facie seafce, or else if either party marry another

person, such second marriage dissolves the contract. Swab.

sall. 10. 11.

But it hath been resolved, that an action will lie at

Common law for the violation of such an executory con-

tract per verbis de future, for the temporal loss to the

party; and although the party hath a remedy in the spiri-
tual court, yet it heems, that by bringing an action at

Common law, and that appearing on record, the re-

medy in the spiritual court is actually released; for now

in lieu of a performance of the contract he shall recover

damages: Also the defendant therein, that he hath been

suited for the same matter in the spiritual court, and pro-

ducing a sentence against the plaintiff, the plaintiff not

withstanding 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.


Dixon v. Holme, 1 Salk. 24. 5 Mod. 511. 6

Mod. 172. 1 Sall. 120. 121.

Such promises are good, though the time of marriage

be not agreed on; but in such case it is necessary, to

initiate the party to his action, to allege that he offered to

marry her, and that she refused. Carth. 457.

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 time promised to take

him for her husband, and averred, that he tendered him-

self, and that the refused, &c. it was objected, that mar-

riage was no advancement to a man, though it was to a

woman of full age, that no time was laid when this agree-

ment was to be executed; but the court over-

ruling both objections. Carth. 457. 1 Salk. 24. 2 S. C.

Harrisson v. Cagge & not. 1 Mod. 511. 2 Salk. 437.

S. P. and the distinction between a man and woman ex-

pounded.

This action must be founded on reciprocal promises; and

therefore if the promise be on one side only, it does

not bind, being only adsum pactam. 1 Salk. 24.

But if a man of full age and a female of fifteen promis-

to inter-marriage, and afterwards he marries another,

an action lies against him; for though such promise may be

full to be voidable as to the infant, yet it shall be bind-

ing on the person of full age, who is concluded to have

acted with sufficient caution; otherwise this privi-

lege allowed infant, of refunding and breaking through

their contracts, which was inter ded as an advantage to

them, might turn greatly to their prejudice. Trin. 5

in form abatement, 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."

Sax. 3. and by 39 Eliz. cap. 9. "All persons who shall receive, or procure to be received, or upon purpose or by necessity and agreement, have, hold and enjoy all such lands, tenements and hereditaments, as the said woman child or maid had in possession, reversion and remainder, at the time of such affent and agreement, during the life of such person that shall so contract marriage; and after the decease of such person so contracting marriage, that then the said lands, tenements, or hereditaments, remain and come to such person or persons as they should have done in case this act had never been made; other than him only that so shall contract marriage."

21. 3 H. 7.

In the construction of the said statute of 3 Hen. 7. the following points have been resolved:

That the indiction for this offence must forth, before the offender hath had his goods or goods, or that he shall not appear, and that the taking was for force, and also that he was married or defiled; for the enabling clause, in saying, that what person takes any woman so against her will, plainly refers the taking to such as is within the preamble; but it needs not forth that the taking was to his mory or defile. 21. 3 H. 7. Cr. Cao. 385. Doff. 22. 1 Aud. 114. 3 H. 7.


It is said in Holt, that to make the offence felony within this statute, the taking must be against her will; but herein by Hening, that it is no manner of excuse, that what will was falsely maintained by the consent, because if the afterwards refuse to continue with the offender, and be forced against her will, the man may from that time as properly be said to be taken against her will, as if he had never given any consent at all; or till the force was put upon her she was in her own free will and consent, and not against her will.

That it is not material, whether a woman taken away against her will be at first 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 that it is not to be construed so as to take him out of the meaning of it, for having prevailed over the weakness of a woman, whom by force means he got into his power. 3 Cr. Cao. 492. 3 Keb. 193. 1 Ten. 243. Brome's case.

That those who after the fact receive the offender, but not the woman, are not principals within this statute; because the words are, receiving willingly the same woman to taken, &c. but it seems clearly that they are acco. after the offence, according to the known rules of law by 3 & 6 Eliz. 2. Stat. 2. P. C. 44. 1 Hal. Hist. P. C. 660.

That thee who are only privy to the marriage, but no party to the forcible taking, or defiling, or confenting, are not within the statute. 1 Hal. Hist. P. C. 160.

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 it is not the law, that the confining of the force there, amounts to a forcible taking within the statute. 3 Cr. Cao. 488. H. 185. 1 Hal. Hist. P. C. 660.

It hath been adjudged, as is the constant practice at this day, that on an indictment for a forcible marriage, founded on this statute, the wife may be a witness against the husband; for it being by force, it cannot be said to be of the force of law to make them one person in law. 3 Cr. Cao. 488. 1 Ten. 243. 4 M. & S. 8.

But the freely without constraint lived with him that thus married her any considerable time, her examination in evidence might be more questionable. 1 Hal. Hist. P. C. 664.

By the 4 & 5 Ph. & Mar. cap. 8. it is provided,

That it shall not be lawful for any person to take away any maid, or woman child unmarried, and within the age of sixteen years, from the parents or guardian in fequestrum, and that if any woman child or maiden being above the age of twelve years, and under the age of sixteen, do at any time, and by force or to such person that shall make any contract of marriage, (contrary to the form of the act,) then that the next of kin of such woman child or maid, to whom the inheritance should descend, return or come, after the decease of the same woman child or maid, shall, from the time of such marriage.
M A S

For Cooke's manor near Gt. Leacon, 37 H. 8. c. 11.
For recovering furred manors, 43 El. 1. c. 11.
For the marriages of Luttre and Flint in Kent, 4 Jac. 1. c. 8.

For draining the lands of Walford and Cymbellam in the
isle of Ely, 4 Jac. 1. c. 13.

For the recovery of mud and ground in Norfolk and Suffolks,
by the order of the fide, 7 Jac. 2. c. 20.

For the draining of Suffolk Level, 13 Car. 2. c. 17.

For dividing commons in Suffolk Level,
repealed, 1 Jan. 2. c. 21.

For opening the ancient, and making new yearns and

For draining Haddamton Level, 13 Geo. 1. c. 18.

For Waterbott Level, 14 Geo. 2. c. 24.

Drained land shall be rank to the nearest manor,
as shall be determined at the quarter-feast, 17 Geo. 2. c. 37.

For draining the waters in the isle of Ely and Blas-
'thun, with Erith in Huntingdon, 29 Geo. 2. c. 21.

For draining marsh lands in the parish of Wickenhall
and Mary Magdalens in Norfolk, 30 Geo. 2. c. 32. See Fens.

Marital Law. 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 useth ab-
undant power, and hath learned that his will is a law. Smith
De Repub. Anglia. lib. 2. cap. 4. See Law of arms.

Martyrdom, (Martyrium, martitium) 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 com-
memorate and pray for them. And therefore several be-
nefactors made it a condition of their beneficence, to be
inferred in the martyrology. — See l]ubt Gabrigge
required from the prior and canons of Evesfuir, for favour
done to them by tewfll et al., — Sac. de bat
ata nIgnabmo., facetiem minia subfcrithi in martyr-
rologia fct. Paris. Antiqu. p. 169. See Kennet's Glos-
yary.

Mafagun, Anciently used for a meafure. Et unum
masagum in villa de Mindone, &c. Pat. 16 Rich. 2. par. 1. m. 35.

Mafella. (Mafella.)

Mafp-peace. Anciently in England every secular priet,
in distinction from the regular, was called mafp-peace,
who was to officiate in the mafs, or ordinary service of the
church. Hence mafs-peace in many of our Savon canons
for the parochial minifler, who was likewise sometime
called mafpp-beare, because the dignity of a priest in many
cases was thought equal to that of a dean or laylord.
But when the times of greater superflition came on, the
word mafs-peace was restrained to those fependants, who
were retained in cantries, or at particular alters to fay
masses for the souIs of the deceafed.
Crawf. edit. 1727.

Maff, (Glans,) The acorns and nuts of the oak, or
other large tree. Glanses numus continent glans, agglons,
which are called in the English law, mafs, and were called
each of an old man, and at the death of the king,
when he was treated of under their proper heads, we shall
not here confider this relationship, as it more particularly
affects matters, and those who are more properly called
servant.
M A S

rants and apprentices. 3 Bee. Ab. 544, 545. See apprentiss, sartorians, and 15 Fin. Ais. and 3 Bee. Ab. 3 M. & ffo. and fowants.

wrate of the enemy, (Magiuer amorum & armament, R. III.) is that he hath the ease and oversight of his Jefy's arm and armory, and mentioned 39 Ed. cap. 7. in 199 marks per annum.

Matter of the treasons, (Magiuer admissorum,) one that receives and conduces ambushes and other part pay, and to be murthered, or be under the trowed fmalts. This order was inflicted by King Jefus I. for the more magnificent action of baffadums and strangers of the greatest pity. Tr.

Matter of Chancery, (Magiuer Cancellaria,) In the bankery there are Matters, who are affidants to the king, and who are either called Ambassadors, or are, Of them there are, some ordinary, and some extra-
diary; the matters in ordinary are twelve in number; and if some fit in court every day, during the term, and be referred to them interlocutory orders forclazz- ing, and computing damages, and the like; and they administer oaths, take affidavits, and acknowledgments of deeds and recognizances: The extraordinary matters are pointed to act in the country, in the several counties of England, beyond ten miles distance from London; by taking affidavits, recognizing, acknowledgments of oaths, &c. for the sake of the factors of the court. By statute, 13 Car. 2. a public fee was ordained, to be taken for the Mifiers in Chancery; in such they or some of them are commonly to attend, for administering oaths, caption of deeds, and disaffirm other burdens: And their fees for taking affidavits, knowledgments of deeds, exemplifications, reports, cert.
ceats, &c. are allowed by that act; and to take and incur disfigure for such a matter to execute this act, and a forfeit of 100 l. &c.

To impoverish the High Court of Chancery, to lay out on government faculties, a sum of money therein invested, out of the common and general exchequer of England, belonging to the factors of the said court, and to apply the interest arising therefrom, towards augmenting the incomes of the matters of the said court, 5 Geo. 3. c. 28.

Matter of the court of wards and liberties, was the chief officer of that court, named and alligned by the king, to whose custody the seal of the court was committed, to superintend the officers and appurtenances thereof, is abolished 12 Car. 2. cap. 24.

Matter of the faculties, (Magiuer facultatum,) Is an officer under the archbishop of Canterbury, who grants licenses and dispensations; and is mentioned 22 & 23 Hen. 8. cap. 22. statute for laying impositions on proceedings in that court.

Matter of the house, is he that hath the rule and usage of the King's table, being an office of high account, and always bestowed upon some nobleman of great merit, and is mentioned 39 Eliz. cap. 7. and 1 Ed. 6. p. 5. This office, under the emperors of Rome, was called Consul facti tabuli.

Matter 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 hoofs jewels not fixed to any garment, at 39 Eliz. cap. 7.

Matter of the King's household, (Magiuer kapitiis, &c.) is otherwise called Grand Master of the King's household, and is called Lord Steward of the King's most pious household. Stat. 32 H. 8. cap. 39. But prior to this, and ever since, he is called Lord Steward of the King's household; and in that capacity is a principal officer of the household, called The Master of the household, of cat authority, as well as antiquity.

Matter of the King's ministers, is a martial officer in Royal armies, most necessary as well for maintaining the forces complete, well armed and trained, as also for evading of such frauds as otherwise may exceedingly

waive the Prince's treasure, and extremely weaken the forces, &c. mentioned 2 Ed. 6. cap. 2. and Mafter-majer general. Stat. 35 Eliz. cap. 4.

Matter of the seas, (Mentioned in Stat. 29 Eliz. cap. 7.) is to have free trade to all which every one shall be entitled to, and to overlie all the rest belonging to his function.

Matter of the pews, was an officer of the king's court, that had the appointing, placing and displacing of all such through England as provided pew byres, for the speedy calling of the King's mates, and other business, in the same as there they may fill up, and to see that they keep a certain number of convenient houses of their own, and when occasion is, that they provide others therewith to furnish each such as have warrant from him to take pew-by-verse, either from or to the sea, 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 stat. 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 prescribed in the act for carrying on letters. But the said rates and rules have been since altered by stat. 5 Ann. cap. 12.

See Post-office.

Matter of the rebels, An officer to regulate and oversee the disorders of dancing and mutiny, used in the palace of the King, inns of court, &c. and in the King's court is under the Lord Chamberlain.

Matter of the Rolls, (Magiuer ratulorum,) Is an officer to the Lord Chancellor of England in the high court of Chancery, and in his absence heareth causes there, and gives orders, Comp. Jur. fol. 41. His title in his patent is, Clericus parum legat, eousius rationum, &c. deambulatius, because the place where the Rolls of Chancery are now kept, was anciently the habitation of those Jews, who were converted to Christendom; but these converts gave themselves up to all sensuality and wickedness, and therefore Edw. 3. anno regni sui 51. suppreffed 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. 12 Rich. 2. cap. 2. and in Fortescue, cap. 24. and no where Matter of the Rolls, until 11 Hen. 7. cap. 20. and yet, cap. 25. estilem, he is called also Clerk. In which respect, Sir Thomas Smith, 16. 2. cap. 10. says, he may not uniformly be called Clerk archivarius. He hath the keeping the officers of the said box 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.

Matter of the Temple, The founder of the order of the Templars, and all his successeurs, were called Mages Templi Magister, and probably from hence he was the spiritual guide and director of the Temple. Ever since the dissolution of that order, he is called Matter of the Temple.

Matter of the wardrobe, (Magiuer garderobes,) Is a great officer in court, who had, till the fire of London, anno 1666. his habitation belonging to that office, called The Wardrobe, near Puddle Dock in London. He has the charge and custody of all former Kings and Queens ancient tabern, remaining in the Tower; and all hangings, beddist, &c. for the King's house. He has also the charge and delivery out of all velvet or scarlet allowed for liverys, &c. Of this office mention is made stat. 39 Eliz. cap. 24.

Marlinspike, A great dog, a mastiff. Cottwel, ed. 1727.

Masts. See Ships, Stores.

Marlitt, (Fr. mafes,) An old decayed house or wall, the ruins of a building. — In burgo fuerant 118 maturae, readdact 4. 21. Domesday.

Marlitt terra, a pond in eifdem maturis 60 demus plus quaerenda fuerunt. Domesday. In a fractus de terris is a quantity
A maxim, or a useful generalization, is a principle or rule that is held to be true and to have wide applicability. Maxims are often used in legal contexts to provide guidance or to articulate principles that are not easily captured in more formalized legal language. They are not binding in the same way as statutes or judicial decisions, but they can be persuasive and are often relied upon by courts and legal practitioners.

In legal contexts, maxims are often referred to as "maxims of law" or "maxims of equity," and they are used to fill gaps in the law where specific rules are lacking. Maxims can be derived from a variety of sources, including legal precedents, scholarly commentary, and general principles of justice or fairness.

For example, the maxim "lex non habet ulterius ultra" (the law does not extend beyond itself) is a maxim of equity that signifies that the law's interpretation and application are limited to the facts presented.

Maxims are not absolute and can be subject to variation based on context. They are often used in judicial opinions to fill gaps in the law or to provide guidance in situations where specific rules are not applicable. Maxims are an important tool for legal reasoning and can be persuasive in legal arguments.

In conclusion, maxims are an important aspect of legal reasoning and interpretation. They provide guidance and insight into the application of the law, but they are not absolute and must be considered in the context of specific legal facts and circumstances.
The honour of Cain, were paid in meal, to make meat
the lords bounds. Cowell, edit. 1727.

Nuts, the feathers of tans or banks on the sea-costs.

Norton, are called the meal and the mather. Id. ib.

Pain, (Medius,) Signifies the middle between two
themes, and that either in time or dignity. For
except the mean between the end made to him and his recovery, that is, in the
now, or, as we usually say, in the mean time. Of
the law, there is Law Mean or Misse, (mentioned in
4. bounces of unfortified lands, made tempore Ed. 1.)

Nineteenth. (Malignus) A meagre or dwelling-houe.
law, fol. 139. F. N. B. fol. 2. Stat. Hieronymi,

Pacquet, (Messa,) An Italian for a dwelling-house.

Paine. In French Meaein de dieu, Domus Deli; house
of God, a monastery, religious house or hou-
self. Cowell, edit. 1727. See Fifteen.

Pain, (Messa,) A messuage or dwelling-house.

The justices of Water c. neare the
ulnar, of shall and (Meditits,) mea-
ture and the other is the
first, is be
in H.

It

Pain. (Messa,) A certain quality or propor-
tion of any thing fold, and in many parts of England
is a bull. According to the 25th chapter of Magu
aria, and the 17. Car. 1. cap. 19. 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, mensura regalis, and was always kept
the King's palace; and all other measures were to be
the same manner, and in every city, market
and other villages, it was kept in the churches.

There shall be one measure through the realm, M. C.
H. 3. c. 25. 27 Ed. 3. a. c. 10. 13 R. 2. ft.
may, &c. infecti temp. Cowell, edit. 1727.

The standard mile, 35 Ed. 1. c. 6.
The measure of vells of wine, cells, herings and
inon, 2. H. 6. c. 11.

17. H. 5. c. 10.
The

The contents of an acre, 24. H. 8. c. 4.
Water measure in port towns may be used, 16 Car.
c. 19. fol. 7.
The respective contents of a barrel of beer and ale,
2. Car. 2. c. 23. fets. 20. c. 24. fets. 34. 1 W.
H. 24. fett. 5.
The bushel of corn and salt accustomed, 22 Car. 2.
8. 22 & 23 Car. 2. c. 12. 5 W. & W. c. 7. f. 18.
A measure of brafs shall be chained in every market,
2. Car. 2. c. 8. fett. 5.

Contables to search for unsealed measures, 22 Car. 2.
c. 9. fett. 6.

Where there is not a clerk of the market, the mayor,
and shall measure, 22 & 23 Car. 2. c. 12. & 4.

Collectors of the excise to provide quarts and pints
of ale for every market town, 11 & 12 W. 3. c.
15. fett. 3.

Commissaries of Winchester measure, 1 Ann. fl. 2.
c. 3. fett. 10.

Water measure of fruit accustomed, 1 Ann. fl. 1.
15.
Wine measure, 5 Ann. c. 27. fett. 17.

Water, or Potter of wooden cloth and of coals,
and an officer in the city of Lincoln. See Almanger.

Peter.

Vol. II. No. 105.

Measuring-money. The letters patent, whereby
tone pepsin exacted of every cloth made, certain men,
besides alnage, called the measuring-money, may be

Meat. A meat-house, or place where meat or meal
was made. Cowell, edit. 1727.

Meat. Is intemperate to be a brieve or reward; it al-
signifies that compensation given in an exchange,
where the things exchanged are not of equal value.
Cowell, edit. 1727.

Medicus. Men of mean and base condition, otherwise called men of low
fortunes; Et planius, homines minus quam ex juxta consu. ex
exordiusdies. Radulfus de Dieto. Anno 1112. So, Dios
militis medii manus homines, &c. Inmensum hominis,
is a man of an inferior condition. Id. ib.

Medianus, Of a middle size, mediumus homines, a man of a
middle fortune; mediumés et, an ox of a middle price.
Id. ib. 16.

Mediatrix of questions, (mentioned in rat. 27 Ed.
3. flay, cap. 24.) Were six persons authorized by that
state, (who upon a quidem rifer among merchants
selling any unmarketable wool, or undue packing)
might before the mayor and officers of the Ingele,
upon their oath certify and settle the fame; to whole order
therein the parties were to give credence without any
contradiction. Cowell, edit. 1727.
It was moved for a *nullus inquirendum* 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 misdemeanor in his head, when he was really killed with a club. *Hoc filia misit qui inveniur* is generally upon an oath paid to the coroner to direct to the sheriff. But *Tejiaka* said this cannot be to the heredit. in 22 Ed. 4, the coroner must inquire into *other* such of them; of course, if you have a new inquiry you must quash this. Indeed a new inquiry was granted in *Miles Borley’s* case. It being proved, that the court being the supreme court, would be the highest misdeemeanor of the coroner. *Hoc enim* Ja. Bid them make some oath of his middelemanor, because he is a sworn officer. Without oath we will not quash the inquisition. *Neugetiae* said, that in the case of *Miles Borley* the inquiry was not filed, and that was the reason why no new one was granted. Hole ordered the coroner to attend, by what (he said) must take the evidence in writing, and that he shd bring his examination into court. *Med. 82. Migh. 22 Cor. 2. B. R. Annex.* See 15 Pat. 4. tit. *Miles inquinandum.*

**Memories.** Are some kind of remembrances or obelisks for the dead, in injunctions to the clergy. 1 Ed. 6.


*Menials.* As *mentservants,* (a derivative from *menia*) signifies the walls of a house, or other place. Are households-servants, that is, such as live within the walls of their master's house, mentioned in the flat. 2 H. 4. 21.

*Menial* comprehends all patrimony, or goods and necessaries for our livelihood; *dominium effe proprius terra ad menam sibi cognitam.*

*Mentalia.* Were such paragons or spiritual lives as were united to the tables of religious houses, and were called *mental benefits* amongst the canonists. And in this sense it is taken when we read of appropriations of ad *menam cum.*

*Menuira.* Is taken for a bushel, as *menura bledis,* a bushel of corn.

*Menuira Ugalis.* The king's *standards measure,* kept in the *Exchequer,* according to which all others are to be *seen.* See 27 Ed. 6.

*Mr. or Mrs.* Words which begin or end with thence syllables fenny fancy place.


*Mercers company.* Provisions for relief of their creditors, 21 Geo. 2. c. 32. 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. 15. For the relief of the bond and other creditors of the wardens and commonalty of the mystery of merchant of the city of London, 4 Geo. 1. c. 50.

*Merchant.* Every one that buys and sells, is not from thence to be denominated a merchant, but only he who trafficks in the way of commerce by importation or exportation; or otherwise in the way of emption, vendition, barrier, permutation or exchange, and who makes it his living to buy and sell, and that by a continued affinity, 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 merchants may, and do after commodity, or the demand or price, or the particular fate of them, but that renders them not artificers, but the same is part of the mystery of merchants; but perforce buying commodities, tho' they alter not the form, yet if they are such as felt the same at future days of paying more for commodities than they sell them, they are not properly called merchants, but barbers, tho' they frequently buy other wares, as warehouse-keepers, and the like; but barbers, and such as deal by exchange are properly called merchants. *3 Miles* 456. 457. *c. 7. f. 12.*

If a person, who otherwise is no merchant, being beyond, takes up money and draws a bill upon a merchant, he cannot in an action brought upon this bill against the drawer thereof, 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. 153.* *Migh. 1 W. & M.* at *Serjeants Inn in Fleetstreet* in *Withey.* Merchant includes all the traders as well and as properly as merchant adventurers. *D. 275.* *c. 5.*

*Guidus.* A merchant is a common term; *per* *Holt* Ch. 2. *Salis.* 445. *Mayor,* *&c.* of *London* *v.* *Witis.*

The custom of merchants is part of the Common law of the kingdom of Great Britain, of which the judges ought to take notice; and if any doubt arise about the custom, they may fend for merchants to know the custom; *per* *Hubert* Ch. J. *Winds* 24.

*Merchant shall have safe conduct,* and may buy and sell by the ancient and right custom, *M.C.* 9 H. 3. c. 30. 2 Ed. 3. c. 9. 14 Ed. 3. f. 2. c. 2. 5 R. 2. f. 2. c. 2.

Two merchants of *London* shall be chosen to receive recognizances of statute merchants, *St. de Mercator.* 13 Ed. 1. *f. 3.*

May freely sell their merchandize without disturbance. *9 H. 1. c. 3.*

May sell their merchandize in groes or by retail, *in London or elsewhere.* 25 Ed. 3. f. 4. c. 2. 11 R. 2. c. 7. 16 R. 2. c. 21. *contra.*

Foreign merchants to have redets by the law of the *flap,* 27 Ed. 3. f. 2. c. 20.

Shall not allow any debts, *those* who have been robbed, or lost their goods at sea. 27 Ed. 3. f. 2. c. 13.

In case of a war, merchants shall have time to draw their effects, 27 Ed. 3. f. 2. c. 17.

Shall not lose their goods for the trespas of their servants, 27 Ed. 3. f. 2. c. 19.

Shall have redets by law merchant, 27 Ed. 3. f. 3. c. 29.

Their ships shall not be compelled to come to an port, 28 Ed. 3. c. 13.

Engrossing prohibited, 37 Ed. 3. c. 5.

May trade freely, so that *English* merchants do not export wool, and that none export gold or silver, in plate or money. 38 Ed. 3. c. 2.

What wares merchants may fell by retail, and wha only in groes, 2 R. 2. f. 1. c. 1.

Merchants of *Italy* and *Spain* may trade to *England* giving security to carry their exports *Weifardt* or *In good faith.*

Shall 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 out to the value of merchandise of the flap, 14 R. 2. c. 2 9 H. 5. f. 2. c. 9. 1 H. 6. c. 6.

Remedy for merchants shall be courteously and righteously used, 14 R. 2. c. 9. 12 Car. 2. c. 4. *f. 3.*

*Merchants* aliens shall not fell to one another wine, *mercy* or other goods, except *victuals,* 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. 9.

*Merchants* alien shall not fell to one another wine, *mercy* or other goods, except *victuals,* 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. 9.

*Foreign merchants* shall be demented as *English* merchanstd be beyond sea, with a penalty on the merchants 5 H. 4. c. 7. 4 H. 5. c. 5.

*Merchants* aliens shall fell their imports within quantity years, and they fell to other *foreigners* 5 H. 4. c. 9.

Repealed, except that *merchants* alien shall not export the imports of merchants aliens, 4 H. 4. c. 4.

*Halfs* shall be alligned to *merchants* aliens, 5 H. 4. c. 9. 18 H. 6. c. 4.

*Merchants* alien shall not fell in groes, notwithstanding the *franchise* of *London,* 4 H. 6. c. 9.
M E R

The Chancellor shall fend extractes to the Exchequer of the exports of the said country, H. 6. c. 2.
None shall fall to merchants for ready money, and they shall not refuse payment in silver, H. 6. c. 24.

May fell cloth at six months credit, H. 6. c. 2.
Merchants stranded from selling to merchants.

Italian merchants shall not sell any goods after eight months from the importation, nor any thing by retail, R. 2. c. 9.
1 H. 7. c. 10.

Merchants of Ireland, Jerse or Guernsey, shall lay out the produce of their imports, H. 3. c. 8.

Notwithstanding this, Marchants in Placentia, without paying any fine to the merchants adventurers of Lodon, H. 7. c. 6.

The trade to Spain, Portugal and France, to be free, 3 Tac. c. 6. Saving of Queen Elizabeth's charter, 4 Sup. c. 8.

Mergidhage, is 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 Merdans, when they governed the third part of this realm.

A man may in his plea, p. 94. &c. faith, that in the year 1016 this land was divided into three parts.
whereof the Wilt-Sassenage, one had, governing it by the law called Wilt-Sassenage, and that contained those nine cities, Kent, Suffet, Surrey, West, Berkshire, Auntruf, Berkshire, Wiltshire, Someryshire, Drefet, and Dvoftreue.

The second Sassenage, was called Wilt-Sassenage, and that contained those fifteen cities, York, Derby, Northinham, Liveret, Light, Lincoln, Northampton, Bedford, Buckingham, Hefed, Effe, Middlefex, Norfet, Suffolk, Cambridge and Huntington.
The third was pofted and governed by the Wilt-Sassenage, whole laws were called Merdans, and held those eight, Gloucefet, Wiltfet, Hertford, Worvick, Oxford, Chelfet, Salop and Stafford.

Out of which three (which relate not at all to a different law, innum, or njage, but to feveral forts of amercia mens, juxta, and fines, for the tranfgreflion of one and the same iv, as we said, with some additions, was framed that name which now we call The Common law of England, Cowell, dit. 1727.

Marget, (Merchetum,) A fine or compropation paid by inferior tenants, to the lord, for liberty to dispose of their husbands in marriage.
No baron, or military tenant of the king, shall sell, by law, his land and daughter and heir, that such lease or marriage from the king, pro marithando filia.

Many of our feudal tenants could neither fend their fons to school, nor give their daughters in marriage, without prefe licence from the fuperior lord. See Kemet's Glafy in Merdans. See Marget.

Merchandize is used in many places in the Magnific, for mercerament.

Mericnianthus Anglarius, Was of old time used for the import of England upon merchantize.

Merep, (Mercrietera) Signifies the arbitrament or intereeption of the king, lord or judge, in punifhing any flande, and directly cenfured by the law: As to be in the grieved mercy of the king, 11 H. 6. 6. is to be in award of a great penalty. See Merebrina.

Mergier, Is where a lefier ellate in lands, &c. is named in the greater.
As if the fee comes to tenant for race or life, the particular eftates are merged in the fee.

A courageous-tail cannot be merged in an eftate in fee, or an eftate in tail can be exftend, by the accession of a tenant eftate to it.
2 Co. Rep. 60, 611. If a lefier who hath the fee, marries with the lfehee for years; this is no barage, because he hath the inheritance in his own, and the law is, that the de lady is right of his wife, 2 Plead. 418. And when a man hath a term in his own right, and the inheritance depends to his wife, so as he hath a freehold in right, the term is not merged or dowered. Cre. Litt. 75. See 15 Vin. Ait. tit. Mergier.

Merchum, A like; from the Sax. meret, law, Metra, meloudia, meret, & meton. Ingulf. p. 61.
on the tenant, for his default in not doing his customary service of cutting the lord's corn. *Parad. Antiq. p. 495.*

15 Refblvet, *a.*

4 The University of Oxford, with part of the stock of the oxen, and a long socket of the sirled's, exempt from serving on juries at the sessions for the peace, 7 & 8 W. 3. c. 32. fett. 9.

Deeds and wills to be registered there, 7 Ann. c. 20.

No jury to be returned at the nisi prius in Middlesex, who hath been returned in two preceding terms or vacations, 4 Geo. 2. c. 7. fett. 2.

Leaseholders qualified to serve as jurors in Middlesex, 4 Geo. 2. c. 7. f. 3.

But one county rate to be made for Middlesex, 12 Geo. 7. c. 29. f. 15.

Militia, Act. 24 Geo. 3., for Public-Beards.

Activity, Are of such kind of canes, whereby full-colors or other furniture for ships are made, 1 Jos. 1. c. 24.

Militia, Is the distance of one thousand paces, otherwise eight furlongs, every furlong to contain forty legs or poles, and every leg or pole sixteen feet and a half, 35 Eliz. c. 6.

Militia, taken by computation for the distance of the refineries of rock-fall from the pits, 8 Geo. 2. c. 12. fett. 2.

Militare, To be knighted, vis. Rec. per Anglicam fei parcellarii, &t. qui habebant uti militare adscriptum apud Westminster, &c. Mat. Welfam. pag. 118.

Middlesex, The trainbands; the standing force of a nation, T. Tysh. Clerendon.

None to be compelled to go out of the thire, but on necessity, 1 Ed. 3. ft. 2. c. 5.

Soldiers shall be at the King's wages the day that they depart out of the county, 18 Ed. 3. ft. 2. c. 7.

None shall be contrained to find men of arms, but by tenure, or by allent of parliament, 25 Ed. 3. ft. 5. c. 8.

Former acts repealed, and the charge of finding horse and arms averted, 4 & 5 Ph. & Mar. c. 2. 13 & 14 Car. 2. c. 3.

All persons required shall appear at a muster, &c. 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. 3. f. 11.

The command of the militia affected to the crown, 13 Car. 2. ft. 1. c. 6. 13 & 14 Car. 2. c. 3.

The powers of the lieutenants and deputy lieutenants 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.

Papists eligible chargeable, 10 & 11 W. 3. c. 12. f. 2.

The lieutenancy may direct who shall contribute to the funding of Public-Senate, 9 & 10 W. 3. c. 12. fett. 3. 1 Ann. ft. 2. c. 23. fett. 2.

Trophy money not to be levied till the former accounts are paid, 1 Ann. ft. 2. c. 23. fett. 4. 10 Ann. c. 25. fett. 4.

Lieutenants to appoint the size of marketts, 9 Geo. 1. c. 12. fett. 7.

New regulations of the militia, 30 Geo. 2. c. 25.

Qualifications to be left with the clerk of the peace, 30 Geo. 2. c. 25. f. 9.

Peters or their heirs apparent not compelable to service, 30 Geo. 2. c. 25. fett. 11.

Liberals do not vacate vacate in parliament, 30 Geo. 2. c. 25. fett. 12.

Men serving for themselves, exempt from offices, statute work, &c. 30 Geo. 2. c. 25. fett. 23. 31 Geo. 2. c. 26. fett. 24.

Married men called out, may set up trades in any part of Great Britain, 30 Geo. 2. c. 25. fett. 75.

Substitutes to be hired for quakers, 30 Geo. 2. c. 25. fett. 36.

Substitutes to affift in the execution of the seal, 30 Geo. 2. c. 25. fett. 44.

In case of invasion, &c. the parliament to be summoned, 30 Geo. 2. c. 25. f. 46.

It is declared by act, fett. 50.

Constitutes to return the names of deputy lieutenants and parish officers in the lift, 31 Geo. 2. c. 26. fett. 14.

Oath to be taken, 31 Geo. 2. c. 26. fett. 18.

Penalty of perverting constables to make false returns, 31 Geo. 2. c. 26. f. 23.

Absence of constable enforced, 31 Geo. 2. c. 26. fett. 35.

Militia laws extended to Berwick, 31 Geo. 2. c. 26. fett. 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.

Militia, (Middlesex) Is a house or engine to grind corn, and either a water-mill, wind-mill, horse-mill, hand-mill, &c. and besides corn and grit mills, there are paper-mills, and tallow and tallowing-mills, iron-mills, oil-mills, &c. The toll shall be taken according to the strength of the water, Ordin. pro piffer in tertii temp. Prohibition shall not go in fuit to be made of a new mill. Art. Cler. 9 Ed. 2. ft. 1. c. 5.

Militia may search mills for adulterated meal, 31 Geo. 2. c. 29. 31 Geo. 2. c. 32. Militia, not as act as magistrate under this act, 31 Geo. 2. c. 29. f. 38. See 15 Vin. Att. tit. Mill.

Milllente, (mentioned in flat. 7 Jcap, cap. 19,) A trench to convey water to or from a mill. Cowell, edit. 1777.

Mines, (Minerarie,) Places or caverns in the earth, which contain metals or minerals. *Jofephus; Boyle.* A mine is not properly so called till it is opened; it is a pit. All pits and mines before; and this is the opinion of Lord Coke in 1 Inst, 54. 6. and Justice Palfden said, that he knew no reason why my Lord Coke's single opinion should not be as good an authority as Fitzherbert in his Nat. Br. or the Doctor and Student. 2 Mod, 153.

A man opens a mine in his land, and digs till he diggs under the lord; if the owner may be thus open, he may follow the same, but if the owner digs there also he may stop his further progress; and fail to be the use in Carnwood. 2 Vent. 342. per Wild J. on a case referred to him by Lord Bridgman, 22 Car. 2.

It was said by the Solicitor general, 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 necessary to come at the ore, and as many as he thinks proper; and Lord Chancellor said, it had been from resolved before Powell J. on great difficulties and consulting and examining the most able miners. *Coffin in Equity in Ld. Ch. King* time, 79. Nov. 10, 1729. Clavering v. Clavering.

If a man demists land for life or years, in which a coal-mine open, the lefsee may dig in it; for the mine being open, it shall be intended by his demising all the land, and as general as he could make it; but the mine was not opened at the time of the demise, the lefsee by lease of the land is not impoverished to make new mines; but in such case if he leaves his land and all mine therein, the lefsee may dig for mines there; revolved 5 Rop. 12. Trin. 41 Eliz. C. B. Sawder's case. A queilo
MINIS

A question was, if copolyder of inheritance may dig mire in his land? The court {choose} to think he might; 'tis that otherwise mines there should never be opened; & in the case of the glebe of a parson. Sid. 152. Trin. 5 Car. 5. B. R., in the case of Rutland (Lord) v. Geo. Lands in which are coal-mines not opened are forested on, in tail, remainder to B. for life, but not without the consent of the rector of the reif, and by it his office to receive the silver of the goldsmiths, and to pay them for it, and to overreach all the real belonging to his function; & his fee is a hundred pounds per annum. The master-worker, who receives the silver from the warden, caufeth it to be melted, and delivereth it to the moniers, and taketh it from them again when it is made, his allowance is not any set fee, but according to the pound of the coin. The third is the controller, who is to see that the money be made to the just alizze, to overreach 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 muster of alizze, 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 account. The forger of meting, who is to see the fee call out, and not to be altered after it is delivered to the melter, which is after the assay-master hath made trial of it. The clerk of the mines, who sees that the bags be clean, and fit to work with. The graver, who graver the mark. The minter, who minter ....

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A French word, signifying as much as expen- 
sam, in Latin, and the Latin word misa is used in 
Kitchin, fo. 144, and Wiff. Symbol. part. 2. cit. 
Proceeding in Chancellor, feit. 21. This word has diverts 
figuritions, as First; It is a gift or customary pre- 
fect which the clergy or the tenants take to the Vic- 
ors, at their entrance into that principality. It was 
formerly given in cattle, but when that dominion 
was annexed to the English crown, the gift was changed 
to money, and that is now 5000l. or more, which 
happened to be thrice paid in King James his reign. 
First at his own coming to the crown, and that 
principality. Second, When Prince Henry was created 
Prince of Wales. And Thirdly, When King Charles the First 
succeeded him in that principality. Misce diuersum 
truit prestantiæ insignia quas quas frugibus præstibat 
immunitatis Coffréis pavulnis fublitis novè conquit commis ordinis, 
that is, 3000 marks for that country. And at Chaffon 
they have a mule-beck, wherein every town and village 
in the county is rated what to pay towards the mule: 
By 27 H. 8. it is ordained, That Lord Mayor shall 
have all such marks and profits of their lands as they have had in 
times past, &c. See 2 & 3 Ed. 6. 36. 33 H. 8. 13. 
4 & 5 Pr. & Mar. c. 11. Sometimes mites are taken 
for taxes or tallages. Aens 25 Ed. 1. 5. Sometimes 
for eights and expenses, as pro militas & custognis, for costs 
and charges, ordinarily used in the entries of judgments 
in personal actions. Mifs is also voculum artis, ap- 
proportioned to a want of right as called, because both parties 
have put themselves upon the mere right to be tried by 
the grand of, or by battle. So as that in all 
other actions is called an issue, in a want of right is called 
a right, unless a collateral point be tried, and there it 
called an iuris. Co. & Eliz. 264. Lit. fil. 102 
and 120. Bract. & B. 2. 37 Ed. 3. 16. To join to 
issue upon the party, is to stand upon the issue upon 
the clear right; and that in more plain terms is 
Wliat else but to join upon this point, whether had 
the more right, the tenant or demandant. Lit. l. 3 
cap. 8. fol. 101. This word is also sometimes used for 
particular, signifying as much as right or right upon. Co. 
& B. 2. 37 Ed. 3. 16. To join on the right of 
money, a meffuage or tenement, as a right place as 
one manors is taken to be such a meffuage or tenement 
as answers the lord a heriot at the death of its owner 
2 l. ft. 285. which in our law French is written me- 
Cowell, edit. 1727. 
Mifls, Leoport perfon. Cowell, edit. 1727. 
Mifl-mone, Money given by way of contract 
conversation to purchase any liberty, &c. ib. id. 
Miffiter, Is the name and full word of the 31 
Plains, being most commonly that which the ordi- 
gives to such guilty malfeasants as have the benefit 
cherry allowed them by the law, and is usually called the 
Plains of Mercy, Cowell, edit. 1727. 
Mifiteria, Is in law used for an arbitrary ame- 
nderment imposed on any for an effic; for where the 
plaintiff or defendant in an action is amerced, the end 
is idem in misericordia. De brat. li. 4. trast. 5. cap. 
11. So miercriordia is the diminutive to miercis 
and is signifying mercy. Tach. fol. 78. our 
Glauwell, faith thus, Eft enim misericordia Dominii Regi 
qua quis per juremamentum legitimum banniam de vino 
seus americanas id se abipit de juro hominum amiciter 
amic. See Glauwell, &c. 9. cap. 11. Firetberik in 
his Nat. Breve, fol. 73. That it is called misericordia 
because it ought to be very moderate, and rather left 
the offence, according to the tenor of Magna Charta 
e. 14. Therefore if a man be unreasonable amerced 
a court not of record, as in a court baron, &c. there 
is writ called Moderae misericordia, directed to the 
or his bailiff, commanding them that they take the 
amercements according to the quality of the faul 
Sometimes misericordia is to be quit and discharged of 
amercements that a man may fall into in the 
fore. See Cresp. Jur. fol. 176. See Americanis 
Fines for offences, Mercy, and Moderaet misericordia. 
Miseria, is to be in the great mercy of the King. 
Rg. 2. 402. 
Misericordia in cillis & potis, Exceedings, or ove 
common, or any gratuitous portion of meat and dress 
given to the religious above their ordinary allowance. 
The payer pays not for what is called misericordia 
ercendam (in quibus pro officiis ut et eis misericordia 
rendered to the benefactors of the church, &c. ) 
Some conveyants they had a stated allowance of the 
over-commons upon extraordinary days, which were 
called misericordia regulars, as. In ministrationibus vero 
mercifordia regularsibus duas duas unus judicat de cella 
rias et ad priadum quas ad cernam. —Monast. Ang 
tom. 1. pag. 149 b. 
Misericordia communis, Is when a fine is set o 
the whole county or hundred. Mon. Anc. 1. tom. 
pag. 976. As de morte ac de communi misericordia 
a constringit, videlicet, communis & hundred commis 
aliquos judicatius nigris, &c. 
Miseria, To succeed ill, as, when a man is 
suced to in crime, and falls in his defence or purgation 
Et si compellamus fiet & in emendando misericrist, fiet 
epitaphio faciat. Lex Coxurn. 78. apud Brompton. 
Miseria, A middeled or tretope,—Jury to in 
quire of all purpofes and misfeas. Cro. Gaz. 59. 
From mis, and sax. ear man, citerre, Ll. Hen. 1. cap. 11. 
In qua vel injuria; et jus vacare; impenitentie legis in sua vel imponer. Cowell. edit. 
1777. 
Miserimer, (compounded of the French mis, 
which in composition always signifies unfit, and venerable) Signifies the union of one name for another; 
a mingling. Cowell.
M I S

The names of men at this day are only founds for dif- 
stinction, though perhaps a name implies or imports 
something more, as some natural qualities, features, or 
characteristics; but now there is no other use of them, but 
to mark out the families or individuals we speak of, and 
to determine them from all others; and therefore as they 
are only marks and indications of things human kind 
and posterity by, the law requires great cer-
nainty herein, to avoid the effects and consequences of 
misappropriating the name, or specifying the party. I. 

2d. 615.

If two names are in an original derivation the same, 
and are taken promiscuously to be the fame in common 
and in the law, though found, to be the same, it is 
nothing but the liberty of using the same, or that of 
of others, in which is a subtle variance in the 
original and common use. 2. Rot. Abr. 135. 

'71. So Agnes and Anne are different names; and 
therefore one declare against J. S. and Agnes his wife, 
and on record of misprison it is Anne his wife, this is a 
misapprehension of the law, and not amendable. 2. Rot. 
135. 3. W. 573. 617.

If there are two English names that are difficult, and 
a Latin name for them both, such names shall serve for 
them, as Jacobus for James and Jacob, although two dif-
cult English names. 2 Rot. 136. 3 W. 278.

3d. 107.

If the Christian name be wholly mispronounced, this is 
very rarely fatal to all legal instruments, as well declarations 
and pleadings, as grants and obligations; and the reason 
because it is repugnant to the rules of the Christian 
gion, that there should be a Christian without a name 
baptism, or that such person should have two Christ-
names, since our church allows of no re-baptizing; for 
if therefore a person enters into a bond by a wrong Chris-
tian name, he cannot be declared against by the name in 
the obligation, and his true name brought in an alias, for 
that poses the possibility of the two Christian names; and 
if he cannot be declared against by the party by his right 
name, or even he made the deed by his wrong name; for 
it is the same thing, if there be no commonwealth, the 
King may cause him to be indicted and 

17. If and for the defaults of clerks misprision of a syllable, or letter, or writing, 

Cropp. Jur. fol. 2. But here we are to observe, 

that other faults may be accounted misprison of treason or felony, because some 

later statutes have inflicted that pun-
ishment upon them, that of old were inflicted upon 

misprison, whereas we have an example, as 14 Ed. 3, 

of such as coin foreign coin, not a contempt of the 

realm, and of their procurers, aiders and abettors. 

Misperion also signifies a mistaking. 14 Ed. 3, 1. cap. 6. 

Here note, that misprison is included in every treason or felony; and where any man hath committed treason or 

felony, the King may cause him to be indicted and 

arrested of misprison if he please. See Stat. 32. 3. 

39. 3 Inf. 36 & 139. See Felony, 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 Edw. in the case of the Earl of Lei-

cester v. Hoyer.

Miscretal in an immaterial point, and where it is only 

an additional Boursb in things circumstantial, shall 

not avoid a grant; as where the husband has a term in 

right of his wife, and this term is received as made to the 

husband. Per Arber J. Cart. 149. Mich. 18 Car. 2. 

22 B. in the case of a daughter of the late 

Dyer.

A miscretal in the beginning of a deed, which goes 

not to the end of a deed, shall not hurt, but if it goes 
to the end of a sentence, so that the deed is limited by 

it, it is vitiating. Per Arber J. Cart. 149. in case of 

Post v. Berkley.

Miscretal is a book containing all things to be 
duly做到wor in the Mass. Lindau, Por. 

De Ecclesiis, etc. &c. Pacharius Eclesiaramen 

fumatur in rei divis, etc. &c. &c. &c. 

Sigismund's Galleon.

Miscretal, as the miscretal, is a miscretal. Cottell, 
ed. 1727. Domed-

in Church.

Miflura. Singing the Name dimittis, and performing 

the other ceremonies to recommend and dismiss a 

dying person. In the Statutes of the church of Penl.

3
in London, collected by Ralph Balsham, dean, about the year 1805, in the chapter De fraterinis, of the fraternity or brotherhood, who were obliged to a mutual communication of all their secrets, it is first confidantia & militia & confidanta primata ejus confidantiae & ejusdem.

Liber Statut. Ecclesiae Linealis, MS. fol. 25.

Militia. A dish or platter for serving up meat to a table; whence a mifori, or dish, or portion of any diet.

King Ethelstan gave to the abbey of St. Augustine in Ely, a mansion for this purpose, in the name of Militia argentum, stipitas armorum, itemum ullam cum frons aure & gemmis cernantibus. Chron. Tho. Thorp, p. 1762. & Mon. Angl. tom. 1. pag. 24. Sirmondus is of opinion, that from hence the word mifer is derived; but Pagi tells us, "Tis quia duo misset sita principalis."

The word mifer was perhaps, that A. the husband of E. died the 20th of February, 39 Eliz. and that afterwards, viz. the 21st of November, 39 Eliz. did marry C., so that the (afterward) is sufficient. Arg. Bridg. 45. Mich. 13 inc. fac. in the case of Smallman v. Abyrrew.

Summons to appear Tuesday the 17th of April, (where King Edward the 1st was then suffering from a long and tedious disease of a chronic nature, viz. 28 St. B.) hath been recorded, and the time of peace on a penal statute, the time being impossible, it was as if no summons had been. 1 Salt. 18. Titm. 2 Ann. R. Queen v. Dyir.

The words of a deed were, that after the death, &c. the tenements aforesaid shall revert instead of remain to the King, as his good remainder; because, as it appears, every one's deed shall be taken most strongly against himself. Br. Fattis. pl. 26. cites 21 Ed. 3. 39.

Refrain for disfrain, if rent be arrear, not being limited to any thing which should be refrained, as on the cattle, or on the land, and so shall not be taken to mean disfrain. Dil. R. 33. 356. Delilah. 31. and Paffh. 115. 1. 2. 3. 4. R. R. Section 103. Coram.

Militiam, or Militiam. Mon. Angl. 3 tom. pag. 102.

Militia, A faile or erroneous trial; where it is in a county court. Cor. Carr. f. 284. Debatt's case.

Militia, Is an abuse of liberty or benefit; as, He hath made for his militia. Old Nat. Derv. f. 149.

Militia abbot. These governors of religious houses, who had obtained from the fee of Rome the privilege of wearing the mitre, ring, globes, and crozier of a bishop. It has been a vulgar error, that these militia abbot were all the same with those conventual prelates, who were forsworn to parliament, as fiducial lords; whereas some of those summoned to parliament were not militia: And some of the militia were not militia. The summons to parliament not any way depending on their mitres, but upon receiving their temporal from the King. Cowell, edit. 1727. See Abbot.

Militia. Was an ancient Norman measure, in use before the conquest; its quantity does not certainly appear; some held it to be the same with carolles, others with medius, and others, that it was mensura decem medium. In Whig, faillia redit, 30 mittors saita. Damage, tit. Wicre Socite. But mites or mittes was not only a fort of measure for salt and corn, but rather the place where salt-cellar in the 17th of B. fell flat. Goldsmith was well acquainted with confusion com propriis solidis, (i.e. the place where they were put) giv velut miticte vacantur. In Monastic, it seems to be a measure, viz. Dedii socitatis reductionis 20 sildium, &c. and in Damage, viz. Redioci societatis 32 mittors saita. Gale's Hist.Brit. pl. 767. Militiam monopolium judicis finis, is a writ judicial, directed to the Treasurer and Chamberlains of the Exchequer, to search and transmit the foot of a fine acknowledged before judicis in cyris, into the Common Pleas, &c. Reg. Original, fol. 14.

Militiuns, or Militiam. Is a writ by which records are transferred from one court 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 militiam into another court, as you may see in 28 H. 8. Dyre, fol. 29. and 29 H. 8. Dyre, fol. 32. This word is also used for the precept that is directed to a gaoler, for the receiving and safe keeping a felon, or other offender, by him committed to a gaol. Cowell, edit. 1727. See Commitments.

Militum, tethis, (Decimae minuti,) Are those of cheese, milk, &c. and of the young of beasts. Ca. 2 car. lyp. f. 694. See Militum.

Militius. This word is often mentioned in our Anglo Saxon historians; it sometimes signifies a breakfast, but also a certain quantity of bread and wine. Cowell, edit. 1727.

Mithrados, A kind of stuff made in England, and elsewhere, concerning which fee 23 Eliz. cap. 9.

Mithridatta mithridato. Is a writ for him that is amerced in a court-baron, or other court, being not of record, for some omission or offense beyond the quality of a fault. 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 Mithridateto.


Mithridato. Modus et forma. Are the words of art in procels and pleadings, and namely, in the anfwer of the defendant, whereby he denieth himself to have done the thing laid to his charge, modus et forma declare. Kitchin, fol. 232. It signifies as much as that clause in the Civil law, Negat, positant equum, offere nomen. Cowell, edit. 1727.

Where modus et forma are of the substance of the issue, and where but words of form, this diversity is to be observed; wherein the issue taken goeth to the point of the writ or action, those modus et forma are but words of form, as in the case of the writ of entry in eia, pro vetibus. But otherwise 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 granted, and it is found that quo feoffitmodus et forma, upon this collateral issue modus et forma are so essential as the jury cannot find a feoffment without deed. Ca. Lit. 928. 5. But in debt by a servant against his master for his salary upon a return, it is a good plea, that he did not retain the servant in full bondage, and he shall not be compelled to levy non retinere generally; for it may be, he retaineth him in other service, and not in full bondage; but non retinuit modus et forma is a good plea; for this shall be referred to the declaration by these words modus et forma. Br. Labours. pl. 46. cites 38 H. 6. 22.

Modus et forma not put the day nor place in issue; but only the matter and substance of the plea. Reg. Pleas. 188. cap. 55.

Where a traverse is and with a modus et forma, if the: this will put the manner, as well as the matter in issue, when the manner is material, as the time, the fact, and other circumstances, when they are the effect of the issue. Reg. Pleas. 185. 186. 5.

Modus deminuendi, Is when either land, a sum of money, or yearly pension is given to the parson, &c. by composition or custom, as satisfaction for his tithes in kind. See 2 boll. fol. 292, and Dittoes.

Mol, or Mol. See Manufuctures, Boll. 122. & Mol, or Mol. See Manufuctures, compend vol medii. paras. Signifieth the half of any thing. Lit. f. 125. See 1 Mol. &c.mol.

Molasse. See Meltasse. Meltassum, or Meltassum. A mill. See Mill.

Molendum, Corn sent to mill, a grind. Cowell, edit. 1727.

Molliums.
Molitura
Stultura.

The Molitura or Stultura, sometimes signified a grill, or rack of corn brought to the mill to be ground; but it was more commonly taken for the toll or molitura paid for grinding. *Paroch. Antq.* p. 120, Molitura (in this sense) frequently occurs in wills, without paying toll, a privilege which the lord generally referred to his own family.—Salvo mile & certe ilia molitura libera familia nigra quae in detta molendin. *Ibid.* p. 296.

This toll for grinding was sometimes called molita, *fina*

Molitura, according to *Spelman*, signifies the servants of an abbey.

*Molition or Molitum laws.* The laws of *Donus Almiferum*, sixteenth King of the Britains, (who began his reign 144 years before Christ) were famous in the land, till *William the Conqueror*. *Ugs. de Primord. Law.*

He enforced the first laws issued in Britain, and these laws with those of *Queen Mercia*, were turned into Latin by *Gildas* out of the Britishe tongue. *Cowell, ed.* 1727.

Molitura, Molitura, A mill-poll or pond. *Paroch. Antq.* 123.

Molitur, The duty or toll paid to the lord by his vassals, to grind corn at his mill. *Cecelis famulis Amadeis nolam fuerit molitum familiarium omnium civitatem St. Amantii, Monastic. 2 tom. p. 97.


Exemptions, *exempt* from attending at the feast, *at St. Marthes.* 52 H. 3. c. 10.

Succeeding abbots or prelates may have actions for the goods of their house taken away in their predecessor's time, or in time of vacation, *St. Marthes.* 52 H. 3. c. 8.


No walle shall be made in their lands during vacation, *St. Wulfm.* 1. Ed. 3. c. 21.

Nothing shall be fent to their superiors beyond sea, *St. Alvorti Regius.* 31 Ed. 1. H. 1. c. 1, 2 & 3. 4 Ed. 3. c. 25.

The smaller monasteries given to the King, 27 H. 8. 28.

Religious persons enabled to sue and to be sued, 31 b. c. 6. 33 H. 8. c. 29.

Ministers disiloved and given to the Crown, 31 H. 8. c. 12.

Abbay lands to continue disfranchised of titles as before, 1 H. 8. c. 13. Sess. 21.

Monasteries come to the King by attainer, revived, 2 H. 8. c. 20. Sess. 21.

Act not to prejudge the liberties of the Cinque ports or Shrewesbury, 32 H. 8. c. 20. f. 13.

The knights of St. John of Jerusalem suppressed, 32 b. c. 8. 24.

The payment of pensions out of the abbey lands enforced, 34 & 35 H. 8. c. 15.

Rents to be received on grants of abbey lands, 35 H. 8. c. 25. 37 H. 8. c. 23.

Colleges, chantries and hospitals given to the King, 7 H. 8. c. 4. 1 Ed. 6. c. 14.

Committors to be appointed to inquire of lands given under the supercitious use, 1 Ed. 6. c. 14. f. 10.

Religious persons may inherit to their ancestors, 5 & 6 H. 8. c. 12.

The penalty of *praemunire* inflicted on the disquieting person on account of the possession of abbey lands, 1 & 4 P. & M. 8. c. 8. Sess. 40.

Mercuratum, Was a certain sum of money paid every 11th day by the lord, that he should not change the goods he had delivered; for it was lawful formerly for great men to coin money, (but not of silver or gold) which was current in their territories. This was abrogated by Hen. 1, cap. 1. *Monexagium commune confit ecastrum in civilizzarum & commissarum, quod vos fast temporis aequus, licet no amande fast omnino defende.* *Cowell, in 1777.*

Money, *Moneta, pecuniae.* Is that metal, be it gold or silver, that receives an authority by the Prince's imperfet to be current: for as wax is not a test without print, so metal is not money without imprefion. *C. 20 Litt.* p. 299.

Such as be taken for falle money not haltable, 3 Ed. 1. c. 15.

No money shall pass but of British coin, *St. de Moneta.* 20 Ed. 1. H. 4. 9 Ed. 3. f. 2. c. 4.

Money shall be viewed at the ports, and shall not be concealed in bag, *C. 20 Litt.*

Defective money shall be pierced, and sent to the King's exchange, *St. de Moneta parvi.* 20 Ed. c. 1.


Importing bad money made capital, *St. de falsa Moneta.* 27 Ed. 1. Ed. 17 Ed. 3. Declared to be treason, 25 Ed. 3. f. 2. c. 5.

Money and plate shall not be exported, *St. de falsa Moneta.* 27 Ed. 1. 9 Ed. 3. f. 2. c. 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 Dred. Denar. incomit Temp.*

Fals money shall not be imported, 9 Ed. 3. f. 2. c. 16.

Money shall not be melted into plate on pain of imprisonment, 9 Ed. 3. f. 2. c. 3. 17 R. 2. c. 1. 17 Ed. 4. c. 1.

Search shall be made for money and plate exported, and fals money imported, 9 Ed. 3. f. 2. c. 9. 16 Ed. 3. 2 H. 6. c. 4.

Counterfeiting money declared to be treason, 25 Ed. 3. f. 5. c. 2.

None to hold a common exchange, 25 Ed. 3. f. 5. c. 12.

The money shall not be impaired, 25 Ed. 3. f. 5. c. 13.

Money shall be delivered at the mint by weight, 25 Ed. 3. f. 5. c. 20.

None shall be compelled to take foreign money, 27 Ed. 3. f. 2. c. 14.

Merchants permitted to re-exchange their money, 27 Ed. 3. f. 2. c. 14. Re-Enfranced, 4 H. 4. c. 15.

The Scotch fourpence to pass for threepence, 47 Ed. 3. c. 2. for twopennys, 14 R. 2. c. 12.

Upon exchanges by aliens, merchandise of the flable to be bought, 14 R. 2. c. 2.

Foreign money shall not be current, 17 R. 2. c. 1.

2 H. 4. c. 6. 3 H. 6. c. 8.

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 halfpence and farthings, 4 H. 4. c. 10.

Shall not be sent to Rome, &c. 9 H. 4. c. 8.

Gally halfpence 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. f. 1.

Wasting, clipping and filing of money made treason, 3 H. 5. f. 2. c. 5. & 6.

Juries of silde and of the peace to enquire of counterfeiting money, 3 H. 5. f. 2. c. 7.

One ounce of gold shall be brought to the mint for every flick of wool bought to be carried Westward, 8 H. 5. c. 2.

The mint to be at Calais, 9 H. 5. f. 1. c. 6. f. 2. c. 9. 3. & 6.

Gold current only by weight, 9 H. 5. f. 1. c. 11.

Any one shall have money coined at the Tower within eight days, and exchanges shall be appointed, 9 H. 5. f. 2. c. 2. &c.

The council may affign the coinage of money and exchanges in places they please, 1 H. 6. c. 1.

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 without licence, 3 H. 7. c. 6.

5 P. Repel
Counterfeiting broad pieces, high treason, 6 Geo. 2. c. 21.

Altering silver money to resembale gold, &c., high treason, 15 Geo. 2. c. 28.

Uttering false money within ten days, or having more, a year's imprisonment, 15 Geo. 2. c. 28. sect. 3.

Counterfeiting copper money, two years imprisonment, 15 Geo. 2. c. 6. sect. 4.

Treasurers may allow expenses of prosecuting counterfeiters, &c., 15 Geo. 2. c. 28. sect. 10.

Offences in counterfeiting money, bringing false or counterfeit money into the realm, and all offences against 15 Geo. 2. c. 28. excepted out of the general pardon, 20 Geo. 2. c. 52. sect. 9. 10.

Forfeiture of all the estates of the Mints of England and Scotland out of coinage duties, 27 Geo. 2. c. 11. sect. 2.

Monger, Seems to be a little sea-veil which fishermen use. Anno 13 Eliz. cap. 11. When the words ends in monger, as acommon, or a commoner, it signifies merchant, from the Saxon monger, mercator. Cowell, edit. 1727.

Monitors, or Mongers, Monetarius, Are ministers of the Mint, which make and coin the King's money. Reg. Orig. f. 262. and 1 Ed. 6. 15. It appears in ancient authors, that the Kings of England had Mints in several parts of the realm and in the town of Exchequer, written by Oksblad, we find, that whereas sheriffs were usually obliged to pay into the King's Exchequer the King's selling money, for such debts as they were to answer for; they of Cumberland and Northumberland were admitted to pay in any fort of money, for it were silver: And the reason is there given, because those two thirds Monetarius de antiquis institutionibus non habent; quod aliquis &c. nam practicis habent unum monetarium & unum omnium. Apud Radian monetam ibidem, tam ab obis & flerlinga quam ad flerlinga prorsus maris or fabricandi, sc. faciendo. Memorandum. Seacc. de Anno 20 Ed. inter Record, de Trin. Rot. Of later days the title of monitors hath been given to persons who make it their trade to deal in monitors upon return. Cowell, edit. 1727.

Monk, from the Greek μονη, which, because the first monks lived alone in the wilderness, and not in cities, Latins they were called monachi, for the same reason affirmed. They were divided into three ranks: Camobriam, i. e. a society living in common under the government of a single presbyter: These were under certain rules, and were afterwards called regulars. Anachoretas, or eremites, were those who lived in the wilderness upon flat bread and water. St. Jerome tells us that of those Paulus futur auctor, Antennis ilustrator, Johannes Baptista princeps: But Scaliger was of opinion, that Paul was the author of making or monks who lived under no common rule, but wandered in the world. Cowell, edit. 1726. In fans shall not be received by the friars before they have entered their fourteenth year, without assent of their parents 4 Hen. 4. c. 17.

Mopls clothes, A certain kind of coarse cloth mentioned 20 H. 6. cap. 22.

Mopsoppul, (from the Greek μοσος, from, and ως = with) Signifies a sailing alone, and so is a privilege of the King (as some interpret it) by his grant, commission or common right, to any person or perfons, of for the sole busines of sailing, making, working or using any thing, whereby any perfons or perfons are restrained from any freedom, liberty or easen you they had betore, declared against law, by 2 Jac. cap. 3, except in some particular cases, concerneth which see 3 Jac. fol. 151. All monopolies against Mop Charta, &C. 2 par. Infat. cap. 29. So then all a colony is a monopoly, which is positively contradicted in Men's Reg. fol. 655. Darcy and Allen. And the worship of the King for howe publike is not a monopoly See Gratias de just Belli & Pacis 223. Cowell, ed. 1727.

A monopoly is described by my lord Coke to be in sustaining or allowance or the King, by his grant, common or other wise, to any person or perfons, of for the sole busines of sailing, making, working or using any thing, whereby any person or persons are restrained from any freedom, liberty or easen that they had betore, declared against law, by 2 Jac. cap. 3, except in some particular cases, concerneth which see 3 Jac. fol. 151. All monopolies against Mop Charta, &C. 2 par. Infat. cap. 29. So then all a colony is a monopoly, which is positively contradicted in Men's Reg. fol. 655. Darcy and Allen. And the worship of the King for howe publike is not a monopoly See Gratias de just Belli & Pacis 223. Cowell, ed. 1727.
ern or perons, bodie pollicy or corporate, are ftoyled
be reftained of any freedom or liberty they had be-
fore, or hindered in their lawful trade, 3 Iift. 181.
And therefore all grants of this kind, relating to any
nroune trade, are made void by the Common law; as
ifging against the freedom of trade, and discouraging
boutr and industry, and reftaining perons from getting
a bucl lawfully a bucl employnent, of playing or
ning of it in the power of particular perons to fct
tho} prices they pleale on a commodity; all which
emanent inconveniences to the publick. 1 Hauk. P.
4. 231. Tenenfan's Collelion of Proceedings in Par-
14. 245.
And upon this ground it hath been refoled, that the
king's grant to any particular corporaion of the fole
portation of any merchandize is void, whether fuch
merchandize be prohibited by Statute or not. 2 Rol.
4. 214. 3 Iift. 182. 2 Iift. 61.
Hence all fo, that the king's charter, im-
owering particular perons to trade to and from such a
circumstance is, as far as it gives such perons an exclusive
right of trading, and debarring all others; and if it
be agreed, that there can nothign be a publick exer-
ise, but an act of parliament. Raym. 489. 2 Chas.
1. 163. 2 M. 126.
Also it hath been adjudged, that the king's grant of
fome making, impounding and playing of cards
void; notwithstanding the pretence, that the playing
them is a matter perfectly of pleasure and recrea-
tion, and often much abufe; and therefore proper to be
reftained; for fince playing with thos. is in itfelf lawful
and innocent, and the making of them an honorable
and valous trade, there is no more reafon why any fuch
bodie should be hindered from getting his livelihood by this tyr-
any other employlant. 11 C. 84. Mor 671. Ny
2. 1 Iift. 47.
And for the reafon allo it hath been refoled, that
grant of the fole ingrosse of wiles and inventories
a fpiritual court, or of the fole making of bills, pleas-
d writs in a court of law to any particular perfon, is
id. 2 Rol. Air. 1. 1 Form. 231. 3 M. 75.
But it feme not clear, that the king may, for a reafo-
table time, make a good grant to any one of the fole ufe
of any art invented, or fift wroght into the realm by
Also it feme to be the better opinion, that the king
grant to particular perons the fole ufe of fome par-
cular employments; as of printing the holy scriptures
law workes, &c. whereby an irreplacable liberty
be of dangerouf confequence to the publick, 1 Iift.
3. 250. 3 Iift. 792. 3 M. 75.
By the lat. 21 Form. 1. comp. 3. it is declared and
ftermed, That all monopoles, and all commotions,
ents, licences, charters and letters patents to any perfon
perons, bodie pollicy or corporate whatsoever, of
for the fole buying, selling, making, working or
ning any thing within this realm or Walet, or of any
her monopoles, and all proclamaions, inbitions, re-
ents, warrants of affillance, and all other matters what-
er, any way tending to the infringing, strengthening,
ning or countenancing of the fame, or any of them,
early contrary to the laws of this realm, and fo
and fhall be utterly void, and of none effect, and in
wife to be put in prue and execution. Iift. 2.
That all perons, bodie pollicy or corporate
whatsoever, fhall be disabled and uncapable to
ue, exercife or put in ufe any monopole, or any
honest livelihood by any law, act, acte, or play-
ing as afofayd, or any liberty, power or fuccefc
end presumed to be granted upon, or any
them.
And it is further declared and enabled, Iift. 3.
That all monopoles, and all fuch commiffions, grants
ftoyle, and all other things, void, and the force and valifhness of them to be and
all be examined, heard tried and determined by and ac-
seconding to the Common laws of this realm, and not
otherwife.
And it is further enabled, Iift. 4. That if any per-
fon fhall be hindered, gainsaid, or difquiited, or his
goods or chattels any way failed, hindered, taken,
away or detained by occasion or pretext of any monopole,
or of any fuch commifion, grant or licence, or other matter or thing, tending as afo-
fayd, and will fuc to be relieved in any of the prefcri-
ies, he fhall have by the fuer of the fame the Common
law, by acftion grounded on the faid fature, to be heard
and determined in the King's Bench, Common Pleas or
Exchequer, against the party by whom he fhall be fo
hindered or goved, or by whom his goods fhall be
fected or attached, or wherein every fuch perfon
which fhall be hindered or goved, or whereof his goods
be fo fected or attached, or which fhall recer three
times as much as the damages which he fuffred by
means of fuch hinderance, &c. and double costs; and
in fuch fuits, or for the playing or delaying thereof, no
effion, protection, wager of law, aid prayer, privilege,
injuration or order of refrain shall be in any wife
prayed, granted, admitted or allowed, nor any more
than one inprentence; and if any perfon fhall, after no-
tice of the fication depending is grounded upon the faid
fature, caufe or procure any acftion at the Common
law grounded therein to be delayed or defayed before judgment,
by colour or means of any order, warrant, power or
authorlty, fave only of the court wherein fuch acftion
shall be depending; or after judgment fhall caufe or
procure the execution to be defayed or delayed by colour
or means of any order, warrant, power or authorlty, fave
only by virtue of error or attainit, that then the faid
peron or perfons to offend shall incur a praminiae.
It is faid, that the fift branch of this lat anfrn, re-
lating to the delay of caufes of this kind before judg-
ment, not only extendeth to the Privy Council, Chan-
cery, Exchequer-chamber, and the like, but alfo to
ths who fhall procure any warrant from the King for fuch
purpose; and it is faid, that the latter branch, relating to the
delaying of execution after judgment, extendeth
even to the judges of the court where the caufe is depend-
ing. 3 Iift. 183.
But it is provided, Iift. 6. That no declaration in
the fature mentioned, fhall extend to any letters patents,
and grants of privilege for the term of fourteen years or
under, of the fole ufe or sell, or any manner of new manufactures within this realm, to the true and
fift inventor and inventors of fuch manufactures, which
others, at the time of making fuch letters patents and
grants, fhall not ufe; fo as allo they be not contrary to
the law, nor mischievous to the fute, by razing priccs of
commodifies, or hurt of trade, or generally in-
venifed; the faid fourteen yeares to be accounted from
the time of the fift letters patents, or grant of fuch
privilege, but that the fame fhall be of fuch force, as
they fhould be if the faid act had never been made, and of
none other.
It hath been resolved, that no new invention con-
cerning 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 Iift. 184.
Alfo it hath been bollon, that a new invention to
do as much work in a day by an engine, as formerly
plied to employ many hands, is not within the faid ex-
ception; because it is inconvenient to turn fo many
labouring men to idlenefs. 3 Iift. 184.
Alfo it feme clear, that no old manufacture in ufe be-
fore, can be prohibited in any grant of the fole ufe of
any fuch new invention by the Iift act. 3 Iift. 184.
It is further provided, Iift. 7. That nothing in the faid
account shall extend to any grant or privilege, power
or authority whatsoever, before the faid act made,
granted, allowed or confirmed by any act of parliament,
long as the fame fhall continue in force.
Provided also Iift. 9. That nothing in the faid
account shall be in any wife prejudicial to any eary
brought or town corporate within this realm, containing 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, or to any companies or societies within this realm, erected for the maintenance, enlargement or ordering of any trade or merchandise, but that the same charters, customs, corporations, &c. 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 withstanding.

And it is further provided, 4 auth. to. 4 "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 salt petre or gun-powder, or the calling or making of ordnance, or that 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 deemed by proclamation; but that all such grants, offices, and rights be of the like force, effect, and validity, as if the said act had never been made.

But it is enacted by 29 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 enacted; and that it shall be lawful for all his Majesties'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 saltpetre, brimstone or any other materials for the making of gunpowder; and that if any person shall put in execution any letters patents, proclamations, edicts, act, order, warrant, requisition, or other injunction whatsoever, whereby the importation of gunpowder, saltpetre, brimstone, or other the materials afore mentioned, shall be any ways prohibited or restrained, he shall incur a praemium.

And it is further provided by the said statute of 29 Car. 1. cap. 3, 3 auth. to. 3 "That nothing in the said act contained, shall extend to any commission or grant concerning the digging, compounding or making of allum or allum mines, &c. nor concerning the licensing of the keeping of any tavern or selling of wines, to be kept in the manor-house, or other place in the tenure of execution of the party falling 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 Newcastle upon Tyne, &c.

But it is said, that the said clause relating to allum was needless; because all such mines belong of course to the persons in whose grounds they are, and therefore nothing concerning them can be granted but in the King's own ground. 3 auth. to. 3

Charters for the sole making of brandy, &c. made void, 2 W. & M. M. 2. c. 5. cap. 12.

Banks. (Monstrum.) A monster born within lawful marriage, that hath not human shape, cannot parol, much less detain any thing; but he is human in his 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 flown for money is a medmenor. 2 Chan. Ca. 110. Trin. 34 Car. 2. Haring v. Palfreman. It was a child that had four legs and four arms and two heads, and both the bodies, whereas 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 dict. It is as much as to say, the showing of right; in a legal sense it denotes a writ alleging out of Chancery, for a false felicity to be reheard to lands and revenues, which he flews to be his right, though by office found to be in the possession of another lately dead, by which office the King is intituled to a charter, freehold or inheritance in the said lands. And this monstrum 7
This for Corvin. and H. 1. cajps, and be but ^Oilatn, Mortuum

In 03. 1. 11 70. 1st cor

It signifies literally demoniastic, and it is what we now call devotary, or that the gift the husband

of his wife. Glanv. "Mortuorum, I "continue

s he men. In Le. 3. 11 70. "his mor
ting.

such a list as he had. The small parcel or bit of land. —

us morfthans joens horrionum. Cura

expounded of two French words, viz. mort, i. mort, id ege, i. pignus, and signifies a pawn of land or tere
ten, or any thing immovable, laid or bound for money

traded, to be the creditor’s ever for ever, if the money be

the day agreed upon; and the creditor holding up and
tenement upon this bargain, is called tenant

5. Of the several kines of mortages.

6. Of the original and several kinds of mortages.

The notion of mortgaging and redemption seems to be

Jewish, and, from them derived to the

and Romans; the plan of the Mosaic law con

utes a just and equal agrarian, that the lands should be

of the same tribes and families, and the people

ight not be diverted by any exostick acts and inventions

the exercise of agriculture, in which innocent em

ought to be constantly educated; and

Vol. II. NY. 106.

could transfer no estate in the lands, farther than to the next

generations, which returned once in 50 years; wherea

fore they computed till the jubilee, that according to the
distance from thence, fuel was the interest 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

holders; but tho’ he did not redeem it at the year of ju

bile; yet the lands came back again free to the vendor

and his heirs. Canum 11. 12.

But our notion of mortgaging and redemption seems to

come have more immediatly from the Civil law, and therefore it will be necescriny herein to consider the di

dictions in that law between pledges and things hypo

thecated. "If.

The suffer or pledge was, when any thing was oblige

for money lent, and the poftexion paid to the creditor.

The hypotexes, was, when the thing was obliged for

money lent, and the perfonal reversion remained with the debt

in case of goods pignorated, the creditor was obliged to

the same diligence in keeping them, as he used about

his own; so that if the goods were sold by the negligence of

the creditor, an action lay as for a deposit, for the prop

erty being transferred to the creditor for a particular purp

use, he was to keep them as his own. See 2bali

ment.

If the debtor did not redeem the thing pledged, the cred

or was to foreclose the redemption of the debtor;

and if the money was not paid, the creditor might sell the pignorita, or hypothecaria, which, when he had

purposed, and obtained sentence thereon, he might sell as his own property; but there was this difference between the attes
gregaria and hypothecaria; that the attes pignorita was

ally against the person of the debtor to foreclose him, be

cause the pignus was already in the possession of the creditor;

but the attes hypothecaria was tam in rem, quam in per

sonam, and was given ad pignus praefciendum contra pecun

iabum post partitum; because herein the creditor had not the

possess of the pledge, but it remained to the debtor; and

ill fentences, which were in their aid, the creditor

could not obtain the property of the pledge; and if the

money was paid before sentence, the pledge was sub

jex to redemption; and where the same thing was pledged to

several, they were said to be partes in pignor, to

whom the things were first hypothecated. Digift. lib. 20.

If the money was tendered or paid to the creditor, the con

tract of pignoration was dissolved, and the debtor

might have the pledge back, as a thing lent; so that

seems to have introduced the notion among us of the
debe s right to redemption, and with them the ufoncap

ation, or the right of prescription, did not extinguish the

pledge, unless a stranger had held it for thirty years, or

the debtor had held it for 40 years. Digift. lib. 20.
	tit. 6.

In the feudal law the rule was, Feudalis, invito domino,

and agnatis, non recte jubiscientur hypotheces, quamvis frutus

ossifficium ad laudem, and the reason of this rule was,

because the land was left to a tenant from the lord’s

original, on which he depended for his personal

service in war and peace; and therefore the feudaty

could not obtrude a tenant on him without his leave, who

might be left capable of those services; and therefore the ten

ant could not originally alien without licence, so he could not

mortgag.

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 impoited a power of disposiog of it

as the owner pleased; there were two ways of mortgag

lands introduced, which Littleton distinguishes by the

names of sodium vivum and sodium mortum. 9 H. 3.
	32. 18 Ed. 1.

The sodium vivum is, where a man borrows recei.

of another, and makes an estate of lands to him, ‘till he

had received the said fimd of the issues and profits of the

lands; and it is called sodium vivum, because neither the

money nor the land dies; for the lands are constantly

paying off the money, and the lands are not left as a dead

pledge, in case the money be not paid. This seems to

be
be the ancient way of pledging lands; for they held, that lands could not be hypothecated; and therefore they used to subjecl the usufructus, which continued originally during the life of the feuidy; but when there was a free liberty given of alienation, then the feuidy could pledge the usufructus of the land at pleasure: for the tenant 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 grofs sum; therefore this way of pledging is now out of use. Co. Lit. 205. See Madd. Peramb. 136.

The medium mortuarii 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 shall pay it, then the pledge is dead to the tenant of the land. Lit. li. 332. Co. Lit. 605.

Of these mortgages there are against two forts; 1st, for the freehold and inheritance; and 2dly, for terms of years. Madd. 318, 319.

18. Of the freehold and inheritance, and here the ancient way was to make a charter of se Bíment, on condition, that if the feoffor or his heirs pay the sum and his principles, he should re-enter and re-poll, and sometimes the condition was contained in the charter of se Bíment, and sometimes it was defeazanced by another charter, as may be seen in the old forms. Madd. 318, 319.

For as a man might annex a condition to his charter, for enjoy or use, qui eft dispersus, 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 disposition, qui incessit fiunt inesse voluntas; but a defeazance or condition annexed after the se Bíment executed comes too late; because the liberor comem parvius attaining the infirmation, in which there is no condition, the tenant must hold the land according to the tenure of the usufruct; 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 involuntary, 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 therefore for the power of the se Bíment and all other his real charges and incumbrances; for though if the se Bíment performed the condition, then he might re-enter, and re-poll, himself in his former estate, and consequently was in above all the charges and incumbrances of the se Bíment; 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 se Bíment, though the money were afterwards paid, and the estate reconveyed to the se Bíment. Co. Lit. 221, 222.

But the courts of equity, as they grew in power, have for a matter of right, and have made an absolute power of redemption, not only against tenant in dower, and the persons who come in under the se Bíment, but even against the tenant by the curtesy, and lord by eftate, that are in the gift; because the payment of the money doth, in the consideration of equity, put the se Bíment in flito quia, 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. For example; A. borrowed money of B. thereupon A. would demife the lands to B. for a term of 500, 600 years absolutely, with common covenants against incumbrances, and so on to B. would hold the day after re-demise to A. for 400 years, with condition, to be void on non-payment of the money at the day to come; this manner of mortgaging came in af-ter the 21 H. 8. for falling into recoveries, when there was a fixed interest settled in terms for years; and was esteemed better for the mortgage, to avoid all manner of pretention from the incumbrances and dower of the se Bíment in mortgage; and was reputed better for the mortgage, because of the feudal duties of the tenure, and was only inconvenient in this; that if the second deed were lost, there appeared to be an absolute term in the mortgage. 3 Bac. Alr. 633.

And this is now the common method, viz. by a demise of the land for a term, under a condition to be void on the payment of the mortgage money and interest, and a covenant is inserted at the end of such deeds, that till the default shall be made in the payment of the money, that the mortgagee shall receive the rents, annuities and profits without account. 3 Bac. Alr. 633.

This has been ruled to create a tenancy at will to the mortgagee, that if necessary, the mortgage can be redeemo; the will is determined till there is a receipt of interest from the heir, which seems to make him also tenant at will to the mortgagee. Rosm. 147.

But now the latt and best improvement of mortgages seems to be, that in the mortgage deed of a term for years, or in the assignment thereof, the mortgagee should make provision for his heirs' interest, that if default be made in the payment of the money at the day, that then he and his heirs will, at the costs of the mortgagee and his heirs, convey the freehold and inheritance of the mortgaged lands to the mortgagee and his heirs, or to each person or persons (to prevent merger of the term) and the whole interest and inheritance o it, to dispose of as absolute owner. 3 Bac. Alr. 633.

2. What shall be deemed a mortgage, or an estate redeemable, and of the distint interesis of mortgage and mortgagee.

Herein we may observe in general, that whatever claus, or covenants there are in a conveyance, tho' they see to impart an absolute disposition or conditional purchase, yet if upon the whole, it appears to have been the intention of the parties, that such conveyance should or is a mortgage, or pafs an estate redeemable, a court (to declare) priority will always confirm it so. 1 Term. 183, 265, 394.

As where the condition of a mortgage is, that the mortgagee should redeem during his life, or that the mortgagee and the heirs of his body should redeem, ye equity will admit the general heir of such mortgagor a redemption; because this can be no purpose there is a clause of redemption; and when the land was originally only a pledge for money, if the principal as interest be offered, the land is free; and it would very hard that it should be in the power of the first heir, or gaining ufer, by such insipimeter reftriction to exclude the justice of the court. 1 Term. 33, 190. Co. Lit. 232, 234, 33, 190. See also 1 Knt. 3, 190.

But if a man borrows money of his brother, and agrees to make him a mortgage, and that if he have no issue male, his brother should have the land; such an agreement made out by proof, will be decreed in equity. Term. 193, per North-Lord Keeper.

The use of 1000 l. made an absolute conveyance to B. of the reversion of certain lands after twelveth lives, which, at that time, were worth little more; as by another deed of the same date, the lands are made demise in deemeable any time during the life of the grantor only, on payment of 1000 l. and interest; A. died, but not having paid 1000 l. the land was held by B. in dower; that his heir might redeem, notwithstanding the re-fidvum clause, and that it was a rule, once a mortgage and always a mortgage, and that B. might have compeled A. to redeem in his life time, or have foreclosed his
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not on a re-hearing, Lord K. North revealed the decree on the circumstance of this case; for it appeared by proof, that A. had a kindred for B. and that he married his windman, which made it in the nature of a marriage settlement; he likewise held, that B. could not have conveyed what he received before the marriage, it not being strong. 1 Vern. 7. 314. 322. Nevius. v. Jordan. 2 Vern. 364. S. C. where it is said, that Lord North's decree was affirmed in the house of Lords.

If A. mortgaged lands to B. worth 15 l. per annum, for leasing 200 l. and at the fame time B. enters into a bond and comports himself (as the record states) he is not paid with

the year, then he be pay to A. his executors or administrator, the further sum of 78 l. in full for the purchase of the premisses, or. A. and dies within the year, and he money is paid the next day after, the mortgage is for

ded to his administrator; yet A.'s heir may redeem, paying the 200 l., and likewise the 78 l. that was paid in

As a where A. for 550 l. made an absolute affignment of church leafs 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. dies, leaving C. his

and his heir; two of the lives died, and the leaf to C. as well renewed by C. and C.'s; and though it

and the mortgagee for

the Master of the Rolls decreed a redemption on

ment of 550 l. and the two fines, 2 Vern. 84. Limeous v. Bull.

A. lends money to B. to carry on certain buildings, it takes a mortgage from him to secure 1600 l. with

and another deed executed for the same purpose. A. takes a covenant from B. that he should convey to

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
denomption on payment of principal, interest and costs, without redemption, that agreement, being

unconscionable; for a man shall not have interest for

money, and a collateral advantage besides for the loan

or clog the redemption with any bye-agreement.


But though thefe and fuch like reftrictions are relieve

shift, to make them anwer the immediate purpose of a
ters; yet if A. on a mortgage, lends money at 5l. per

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 neglects

pay the interest within the time, equity will not re

ve him, but he must pay 5 l. per cent. for though the

right to receive the interest, except the payment of

is, fo for the mortgagee might have refused to lend his


xx. 1 P. W. 653.

So if the mortgage devife, that the mortgagee shoul

remitted part of his mortgage money, provided he

ys the principal and interest within three days after his

cafe; if the condition be not performed, the rene

nence is lost; because being a voluntary bounty, and not

debite jusfnitie, the party must take it as it is limited, (feu

justi daret, seu justi dinterfer; and the court cannot

liew in this cafe after the day. 1 Chan. Ca. 52.

But where in a mortgage there was a provif, that if

the interest was behind six monlhs, then that the interest

should be accounted principal, and carry interest; this

Lord Cooper was decrred to be a vain claufe, and of

use; and he faid, that no precedent had ever carried

in advance of interefl fo far, and that an agreement

dale at the time of the mortgage, will not be fufficient

make future interest principal; but to make interefl

increase, that is, to increase the interefl grown due, in

and then an agreement concerning it may make it

principal. 2 Balh. 449.

The mortgage before forfeiture, and whilst it remains

moot, whether he will perform the condition at the

time limited or not, hath the legal eftate in him; also al-

the furniture he hath an equity of redemption; fo that

the bill considered as owner and proprietor of the eftate,
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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 whatsoever; and as an equitable perform-
ance as effectively defeats the interest of the mortgagee, as the legal performance does at a debt due under the traditional
flil, by the mortgage, till the equity is totally fore-
closed; on this foundation it hath been held, that a person who comes in under a voluntary conveyance, may redeem a mortgage; and that such right of redemption be inherent in the land, yet the party claiming the benefit of it, must not only let forth such right, but also show that he is the person entitled to it. Hard. 419. 1 Vern. 185. 1 Vern. 147.

As the heir at law is regularly intitled to the benefit of redemption, he is also intitled to the assistance of the per-
sonal estate of the mortgagee for that purpose; according to the doctrine establish'd in the courts of equity, that the personal estate, and the hands of the executor, 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 controlling the debt, and the real con-
ferred only as a pledge for it; according to the com-
mor rule, Sui finiti comandam festivit diabet & unam. Prec. in Chan. 477.

And on this foundation it hath been frequently held, that as a man mortgage lands, and covenants to pay the money, and dies, the personal estate of the mortgagee shall, in favour of the heir, be applied in execution of the mortgage. 2 Salt. 449.

Also it is held by some opinions, that this benefit shall not depend solely on the heir at law, or baronibus natis, but also to an heres fidelis, from a presumption, that it is the intention of the tellator, that he should have all the pri-
ileges of the baronibus natis: And some even held, that an ordinary devilee shall have this benefit; but as to this last point it hath been held otherwise; and that if a man mortgage 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 tellator, that he should have it discharged. 2 Chan. Ca. 84. 1 Vern. 30. 1 Chan. Ca. 271.

So if the mortgagee conveys away the equity of re-
demption, the purchaser shall not have the benefit of the personal estate, but must take it as more. 2 Salt. 450. 1 Vern. 37.

It has likewise been held by some opinions, that the heir of the mortgagee shall have the benefit of the per-
sonal estate to pay off the mortgage, tho' there be no co-
evant in the mortgage-deed for the payment thereof; because the mortgage-money is a subsequent debt, neither there he any records convey'd for the payment of it or not. 2 Salt. 449. 1 Vern. 356. Prec. Chan. 61. 3 Precid. 360.

But where a mortgage in fee was made redeemable at any Michaelmas day, to the end of the world; and since here was no covenant or condition, either express or implied, to charge the personal estate of the mortgageor, he thought there was no reason to intend any such thing, and therefore it was given to other persons. Precid. Chan. 472. 2 Vern. 701.

By the flat, 4 & 5 W. 3, cap. 16, reciting, The great frauds and deceits are often practised by necchelers and evil disposed persons in borrowing of money, or giving judgments, fluates and recognizances privately and fraudulently; and for the security of the said fame persons do afterwards borrow money upon deceit of their lands of other persons, and do not acquit the latter lender thereof with the same; whereby such late lender is very often in danger to lose his whole money, or forced to pay off the debts secured by the said judgment, and if the same remain unpaid, it could not be a benefit of the said mortgage; and that divers per-
sons do many times mortgage their lands more than once without giving notice of their first mortgage; whereas the lenders of money upon fecund or after mortgages often lose their money, and are put to great charges in suits 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 to be ad-
tended against him or them, one or more judgments; judgments, fluates or fluates, recognizance or recogni-
ances, to any person or persons, creditor or creditors, or any other person or persons in fraud for or to the use of such person or other lender or creditors, and do not give notice to the said mortgagees, or the said mortgagee, of the said judgment or judgments, fluates or fluates, reco-
nizance or recognizances, in writing under his, her or their hands or tenements, any part thereof, to the second or other lender or lenders of the said money, creditor or creditors, or to any person or persons in fraud for or to the use of such person or other lender or creditors, creditor and creditors, and do not give notice to the said mortgagee, or the said mortgagee, of the said judgment or judgments, fluates or fluates, recognizance or rec-
nizances, and all interfit and charges due thereunto and cause and procure the same to be vacated, or dis-
charged by record; that then the mortgagor or mort-
gagors of the said lands and tenements, his, her or the heirs, executors, administrators or assigns, shall have a benefit or remedy against the said mortgagee or mortgages his, her or their heirs, executors, administrators or assign of any of them, in equity or elsewhere, for redemption of the said lands and tenements, or for the recovery of the said mortgage or mortgages, his, her or their heirs, executors, administrators and assigns, and may have and enjoy the said lands and tenements for such estate and term therein, as were or was granted and feated by the said mortgagee or mortgages against the said mor-
gagor or mortgagees, and all perfon and persons lawful heir or them; fee from equity of redemption, and as fully, to all intent and purposes whatsoever, as if the same had been pu-
ch'd absolutely, and without any power or liberty of redemption.

And it is further enacted, That if any person the mortgagor or mortgagees of any lands or tenements to any person or persons for security of any money lent, or otherwise accrued become due, or for other valuable considerations; and the said mortgagee or mortgagees shall again mortgage t

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some lands or tenements, or any part thereof, to any other person or persons for valuable considerations (the said former mortgage being in force and not discharged,) and shall not deliver to the said second or other mortgagee or mortgagees, or some or one of them, the former mortgage or mortgages, in writing under their hands, or the said former mortgagee or mortgagees, his, her or their heirs, executors, administrators or assigns, shall have no relief or equity of redemption, against the said second or after mortgagee or mortgagee, his, her or their heirs, executors, administrators or assigns, shall and may bold and enjoy such more than once mortgaged lands and tenements, for such cistate and term therein, this or were or was granted and conveyed by the said mortgagor, or mortgagees, against him, her or them, his, her or their heirs, executors or administrators respectively, free from equity of redemption, and as fully, to all intents and purposes, as if the same had been an absolute release, and without any power or liberty of reemption.

Provided always, and be it further enacted by the authority aforesaid, That, nevertheless, if it happen here be more than one mortgagee at the same time make, any person or persons, to any person or persons, of the said lands and tenements, the several late or under mortgagee, his, her or their heirs, executors, administrators or assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal debt, with any advantage to the proper mortgagee or mortgagees, his, her or their heirs, executors, administrators or assigns.

Provided always, That nothing in this act contained shall be construed, deemed or extended to bar any widow or other person, being a former or present mortgagee or any of the said lands, to claim in the same her husband in such mortgage, or otherwise lawfully or exclude her self from such her dower or right. It hath been held, that if a man mortgages certain land to one man, and mortgages that land with some others to another, tho' this seems to be a case omitted at of the above statute against clandestine mortgages; if it appears to be a contrivance to evade it, as if an or two of land were only added, this will not exempt also a person, who will take advantage of the statute, shall be an honest mortgagee; and therefore, if a man used any fraud or practice in obtaining a second mortgage, he shall not have the benefit of the statute. 29 Geo. 2, 58 and 59. 21.

The methods of redemption and foreclosing being dirty and expensive, and inconvenient, not only to the mortgagee but also to the mortgagor, the same forms now used by the 7 Geo. 2, cap. 20, which reciting, That several mortgages frequently bring about a great occasion of injustice or loss, and so be made that the mortgagor may not only redeem his estate, but bring action on bonds given by mortgagees to pay money secured by such mortgages, and for performing the tenant therein contained; and likewise commence in his Majesty's courts of equity to foreclose their mortgages from redeeming their estates; and the courts having been granted to hearing before the said manner, and power to compel such mortgagees to accept the principal money, and interest, due on such mortgages, and costs, to pay such mortgagees from proceeding to judgment of execution in such actions, but such mortgagees must live recompense to a court of equity for that purpose; in which case the courts of equity do not give relief until the person of the cause, for remedy thereof, and to obviate objections relating to the same, it is enacted, That from and after the first day of Egloer term 1734, whereto shall be brought on any bond for the payment of money secured by such mortgage, or performance of any of the terms and conditions of the same, shall be brought in any of his Majesty's courts record at Westminster, or in the court of seale in Wales, or in any of the superior courts in the counties of Chester, Lancaster or Durham, by any mort-

MOR

MOR

gage or mortgagees, his, her or their heirs, executors, administrators or assign, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending in any of his Majesty's courts of equity, in that part of Great Britain called England, for or touching the foreclosing or redeeming such mortgage or mortgages, and shall have power to the said persons or persons having right to redeem such mortgaged lands, tenements or hereditaments, and who shall appear and become defendant or defendants in such action, shall, at any time pending such action, pay unto such mortgagee or mortgagees, or in case of his, her or their absence, shall bring into court, where such action shall be depending, all the principal money and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or in equity upon such mortgage, (such money for principal, interest and costs, to be ascertained and computed by the court where such redemption is or shall be depending) the money paid to such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage; and the court shall and may discharge every such mortgagee or defendant of and from the same accordingly; and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the costs and charges of such mortgagee or mortgagees, to signify, surrender or re-convey such mortgaged lands, tenements and hereditaments, and such estate and interest, as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences and writings in his, her or their custody, on the payment of such mortgaged lands, tenements and hereditaments, to such mortgagee or mortgagees, who shall have paid or brought such monies in the court, his, her or their heirs, executors or administrators, or to such other person or persons as he, she or they shall for that purpose nominate or appoint.

Sed. 2. And it is further enacted by the authority aforesaid, That from and after the said Egloer term 1734, where any bill or bills, suit or suits shall be filed, commenced or brought, in any of his Majesty's courts of equity in that part of Great Britain called England, by any person or persons having or claiming any estate, right or interest in any lands, tenements or hereditaments, under or by virtue of any mortgage or mortgages thereof, to compel the defendant or defendants in such suit or suits, (having or claiming a right to redeem the same,) to pay the plaintiff or plaintiffs in such suit or suits, the principal money and interest due upon any mortgage together with his, her or their costs of his, her or their admittance the right and title of the plaintiff or plaintiffs in such suit, and costs of court and of equity may and shall, at any time or times before such suit or cause shall be brought to hearing, make such order or decree therein, as such court or courts might or could have made therein, in case such suit or cause had been regularly brought to hearing before the said court or courts, and such suit or cause shall be bound by such order or decree so made, to all intents and purposes, as if such order or decree had been made by such court at or subsequent to the hearing of such cause or suit; any usage to the contrary thereof in any wife notwithstanding.

Sed. 3. Provided always, That this act, or any thing therein contained, shall not extend to any case, where the person or persons, against whom the redemption is or shall be prayed, shall (by writing under his, her or their hands, or the hand of his, her or their attorney, agent or solicitor, to be delivered before the money shall be brought up into such court, within three weeks after the same shall be brought in his Majesty's courts record at Westminster, or in the court of seale in Wales, or in any of the superior courts in the counties of Chester, Lancaster or Durham, by any mort- Vol. II. No. 107.
There were two causes of making this statute, [2 wherein appears 111, The withdrawing the services creas-
ed for defence of the realm. And azally, The crafty
lords flogging the ecclesiarchs. &c. To prevent which Lord
Cafk observes, that divers provident lords at the creatio-
of the legioury had a clauze in the deed of feem agains-
many ways to land and tenements, and to prevent
feit, and fubfequent without quorin, exceptis viris religiosis. 2BoL 75. cit.
Bract. lib. 1. fol. 13. and fays, that he had been man-
of those deeds; but fays, that the ecclesiastics perf-,
found many ways to creep out of this statute; &c. By
purchasing lands held of themselves, or taking land
for long terms of years, &c. and that bishops, priors,
and other ecclesiastics perfons secular, took them-
selfs to be out of this statute; and which devices the fol-
figure of 7 Ed. 1. intended to provide against.

Stat. 7 Ed. 1. where of late it was provided, That
religious men should not enter into the fees of any
with licence and will of the chief lord of whom such fees
hold immediately; and notwithstanding such religious
men have entered as well into their own fees as into the
fees of other men, appropriating and buying them, and
and times receiving them of the gift of others, whereby
services due of such fees, and which at the begin-
times were provided for defence of the realm, are
wrongly and shamefully distributed among the
same; it is ordained, That no perfon religious, or of
whatsoever, body politic, ecclesiastical or lay, sole
aggregate, shall buy or fall any lands or tenements
under the colour of gift or lease, or by reason of a
other title receive the same, or by any other craft or
 device impair the same; nor shall be a benefactor
by such lands may in any wife come into mortmain,
der pain of forfeiture of the same; and within a
after the alienation the next lord of the fee may ent,
and if he do not, then the next immediate lord, fr
time to time, to have half a year; and for default
of the former lords, the King shall have the land to
secure for ever, and shall enioy others by certain
services. This statute does not extend to gifts to
religious perls by the King, but that he may give lands to them as
so to any other without any forfeiture. Arg. Pl. C. 2.

By the words (other perons whatsoever) is meant, or
whatsoever of like quality, as being a body politic
or corporate, ecclesiastical or lay, sole or aggregate of men,
2BoL 75. 

Or by any other craft or engine? These words were
ded to prevent all other inventions and evasions. But
this statute extended only to gifts, alienations and or
conveyances made between them and others by craft,
and by any other artifice or engine by the Kings
land, which they meant to get, brought a great
wroght against the tenant of the land, and he by
abstained to make default, and to they should rece
the land, and enter by judgment of law. Ed. 4.

Not that this statute was not made for and taken away by the statute of 2H. 4. 152, they
they found out another evasion out of all these statutes
for since they could neither get any land by purch,
gift, lease or recovery, they caused the lands to be
veyed by foevity, and in other manner to divers
ons and their hire, to the use of them and their
fors, by the benefit of them they took the profits. But

even 15 Ric. 2. enacted thts the tenant should not have the
forefeiture of the statute of 7 Ed. 1. But the foundation
of all these statutes was 9 Hen. 3. Magna Chart.
cap. 36. 2BoL 75.

The next lord of the fee may enter? If there are 
and tenant, and the tenant aliens in mortmain, and 8
shall have but four years, as he had in the feignory, notwithstanding this statute
for if he hath but an effeit for life to all in the feignory当他
he fhall have the greater estate in the land; and for is
intendment of the statute: but the lord of the part-
shall have perspective of villain in fee. But
for if he have an effeit for life to all in the
eclesiarch, he shall have it in pure woxres or ecclesi-

Quoted note. Br. Etatrs. pl. 42. citer 5 Ed. 6. 41.
And for default of all the chief lords, this is to be understood of such inheritances as may be held; but if such inheritances as are not held, as villains, rentless, chargeless, commons, &c., the King shall have them presently by the act of the same land; forasmuch as the justices have heard, for the quarter in the finding of the charge, that the party impleaded made default by collusion, and where the demandant by occasion of the statute, could not obtain fein of the land by title of gift, or other alienation, he shall now by reason of default, and so the statute is defrauded.

2. It is not contended that the King, and the commonalty granted to them is not mortmain, because it charges the person only. Co. Lit. 2. b.

Stat. Wilm. 2. 1 Ed. 1. c. 1. s. 2. s. 3. When diligent men and other ecclesiastical persons do implead by way of petition, and the party impleaded makes default, whereby he is deprived of the land, it shall be lawful for the justices, for the quarter in the finding of the charge, that the party impleaded make default by collusion, and where the demandant by occasion of the statute, could not obtain fein of the land by title of gift, or other alienation, he shall now by reason of default, and so the statute is defrauded.

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fand an effect 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 gift, (other than stocks in the publick fund.) be made by deed indented, in presence of two witnesses and two clerks, within twelve calendar months before the death of such donor, and be enrolled in Chancery within six calendar months after execution, and unless such stocks be transferred six calendar months before the death of such donor, and unless the same be made to take effect in reversion immediately from the making, and be without power of revocation. Nothing relating to the fealing 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 purchase for a full and valuable consideration.

Sec. 3. All gifts of lands, &c. or of any charge affecting lands, or of any stock or personal estate to be laid out in lands, &c. for charitable uses, which shall be made in any other manner, shall be void.

Sec. 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 Easin, Windsguy, or Wiffingfby, for the better support of the professors of the following corporations.

Sec. 5. No such college or house, which shall hold so many aduanions as are equal in number to one moiety of the fellows, or where there are no fellows, to one moiety of the fludents upon the foundation, shall be capable of purchasing any other aduanions, the aduanions of the fellows being annexed to the headships of colleges or houses not being computed.

Sec. 6. Nothing in this act shall extend to Scotland.

For more learning on this subject, see 35 Viz. Abr. tit. Mortmain.

AHABITATUR, (Mortuum, mortuam,) is a gift left by a man at his death to his parish church, for the recompence of his personal titles and offerings not duly paid in his life-time. A mortuary is not properly and originally due to ecclesiastical incumbents from any, but those only of his own parish, to whom he minifies spiritual instruction, and hath right to their titles. But by custom in some places of this kingdom, they are paid to the parions of other parishes, as the corps polles through them. See the statutes 21 H. 8. c. 6, before which statute mortuaries were payable in debts; the belt to the lord for a heriot, the second for a mortuary. Nor was it only de meliori avisi, sed de meliori re, Mortuaria (see List) for dictum est quia exstinguit ecclesias profanam quod ductum est de preliis, et de pecunia reali in mortuaria, which mortuaries being held as due debts, the payment of them was enjoined as well by the statutes De crempolitae aegatis, in 12 Ed. 1. as by several constitution, &c. A mortuary was anciently called Scanilefis, which signifies pecunia sepulcrialis, or Sodulum anima. After the conquest it was called a con-pretis, (because the beft was preferred with the body at the funeral,) and eminent a principal; of which see a learned discourse in the Antiquities of William fron, fol. 379, and the Schola Hisfory of Thes, pag. 287.

There is no mortuary due by law, but by custom. 2 part IJf, c. 21. See Speim. de Comm. tum. 2. fol. 310. This is likewise proved out of Flint, lib. 2. cap. 60. John Erskine, when pope in the year 1417, says, there is no mortuary. See Mortgmont, Proutst, and Pretium fe- punctilium. In the 56 canon's it is called Premitum seculari, and Schelinn, viz. One corpus seculum babit in jure for vivam & eorum & wifdomum & ornamenta lebia, &c. Canon. Holin. lib. 19. cap. 60. And in another place, F. & C. 21 & 22, it says, seculum et pretium seculari, &c. and pradcit seculia pretium eis & pretium cum consone. The word mortuariae 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 priest of the parish.


Mr. Schene tells us, that the usage anciently was, bringing the mortuary along with the corps when it was to be buried, and to offer it to the church as a satisfac-
we draw our word rate and most, to plead. The Seats say, to note, as the Whitehill at Scone, 1. More placid de Scone. We commonly apply the word most to that which is the most esteemed by young students in the inns of court, the Chancery. In the charter of peace between King Stephen and Duke Henry, afterwards King, it is taken to signify a bastard, as Turlis de London, & nata de Windfor, the tower of London, and forlorn of Windsor. These also signify a flagging pool of water to keep fish in, or a species of cattle encompassing a cattle, or other dwelling house. Call. edw. 1727.

Metibus. One who may be removed or displaced, or rather a vagrant. In certere discretion, cavilen, vel alti religiis, mutabiles, furiosis, &c. enconvi non potestum, &c. In jure conveni non pajtum. Plato, lib. 6, cap. 6. por.

Specter. A customory service or payment at the rate or court of the lord. Call. edw. 1727.

Motion in court. A motion is a prayer or request to remove the party to the court, either in person or by counsel. P. R. C. 245.

One ought not to move the court for a rule for a thing to be done, which may by the common rules of practice of this court be done without moving the court or it; much less ought the court to be moved for the losing of that which is against the common rules and the practice of the court. 2 L. P. R. 209. cites 24 Car. 9. R.

For the court is not to be troubled, nor the client put to the charge of needleless motions, nor of motions not to be granted; and the former sort of these kind of motions in favour of ignorance, and the latter of too much permission, the former are to put the court to needleless trouble, 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 leas that was fined in this court, to allow his writ of privilege. But Roll Ch. Judd. bid him plead his privilege; and he cannot allow it upon a motion and his throwing of this writ of privilege. St. 373. Trin. 1653. B. R. Anon. It was said by Roll Ch. Judd. If there be a judgment given there, and one of them is taken in execution, and afterwards set at large by the plaintiff's consent, if either of the other two be afterwards taken in execution upon the same judgment, he may have an auditia queulae, he cannot be relieved upon a motion in court, that found upon an affidavit. Stit. 387. Mich. 1653. B. R. rive v. Goodrick.

After motion in arrest of judgment, no motion shall be for a new trial, but after motion for a new trial, one more arrest of judgment. 2 Sult. 647. Yarker v. Stamp.

If any thing be moved to the court upon a record, as record upon which the motion is made be not in part when the motion is made, the court will make no rule upon such a motion. 2 L. P. R. 208. cites Hill, Car. D. R.

One ought not to move the court for a thing against which they have delivered their opinions. Trim. 22 Car. 1. R. But ought to rett satisfied with the judgment of the court, and to submit thereto. L. P. R. 268.

Every person who makes a solemn argument at the bar of the court, and not heard, or heard by the court for his argument, the L. P. R. 210.

See 15 Fin. Abr. tit. Motion.

Subostice. An outcry or alarm to mount, and make one speedy expedition. Cowell. edit. 1727.

rillarce. Winter-gloves made of ram-skins. In Leg. 1. cap. 70. they are called Muffes, and sometimes Muffets.

Mufet. (Metella.) A fine of money set upon one, for the fault or misdemeanor. hat.

Müter. As it is used in the Common law, seems to be a term used for mullets, or the French millefem, and signifies the lawful fish (born in wedlock, though begotten before) preferred before an elder brother born out of matrimony, anno 9 H. 6. 11. Smith de Reg. Anglia, lib. 3. cap. 6. But by Glavell, lib. 7. 9. the lawful issue seems rather multer than mütet, Volt. II. No. 197.

Because he is begotten in matrimony, and not in consanguine, for he calls such illece multerius, opposing it to buffalers; and Britton, cap. 70. hath freer multer, i.e. the brother be-

Mueller, or Mueller. A man hath a son before marriage, that is a buffaler, and unlawful, and after he marries the mother of the buffaler, and they have another son; this second son is called multer, that is to say, lawful, and shall be heir to his father, but the other cannot be heir to any man, because under the law he is said to be multerius, or fishius paterius; and they are always distinguished with this addition, buffaler eique multer paterius. See 2 Edw. fol. 170 & 243. Sir Edward Coke's lays, 2 inf. fol. 343. the wife time married, and a woman for a wife, and sometimes for a widow. See Librat.

Mütive, The being or condition of a multer, or lawful ilce. Ca. Lit. 352 b.


Müllerius, or Mullnus. See Mellnus Lains.


Mulliar, or Mullura epithelia. Is derived from the Latin word mulla, for that it was a fine given to the King, that the income might have power to make his laws will and testament, and to have the probate of other mens, and the granting administrations. 2 inf. fol. 491.

Multiplication. (Multiplicatio,) Multiplying or increasing. By a statute made 5 H. 4. cap. 4. it is ordained and established, That none from henceforth shall be able 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 presumption that some persons skillful in chemistry, could multiply or augment those metals. And H. 6. granted letters patent to some persons to multiply water with fire, and to find out the philosopher's stone, to free them from the penalty 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 unaccountable vanity of those who fancied such attempts to be practicable, but only to tend them beyond feca, to try their experiments with impunity in other countries, the statute of Hen. 4. was at last wholly repealed by 1 Will. & M. c. 30. Cowell. edit. 1727, 1 How. P. C. 47.

Mülicia (Multitudes.) Muli, according to some authors, consist of ten persons, or more. But Cow. en. Inf. fol. 257. says, it is limited to any certain number, but left to the determination of the judges.

Mullio foatto, or A mino de orulus. Nis is an argument often used by Littleton, and is framed thus: If it be to fo a composition passing a new right, much more is it for the restitution of an ancient right. Co. en. Lit. fol. 253. and 260 a.

Mütilo, Mutilo, Polito, Mütilo, Mirro, A mutten or thep, or rather a weber, qua tyllicitas mutilit.

Mullio. edit. 1727.

Mültiù. Pieces of gold money imprint with an Augustus, set, or lamb on the one side, and from that figure called multus. This coin was more common in France, and sometimes current in England, as appears by a parent 33 Ed. 1. cited by the learned Spelman, though he had not then considered the meaning of it.

Müllerius, Mullerius, Mullur. Mullerius vel mulerus. Signifies the toll that the miller takes for grinding corn. Cowell. ed. 1727.

Mültum. On importation, pays a barrel excise 3 l. by 12 Car. 2. c. 3. and 3 l. by 12 Car. 2. c. 24. and 3 l. by 4 Will. & M. c. 3. and 3 l. by 5 Will. & M. c. 20. sect. 10. and 16. by 4 Ann. c. 6. sect. 10. and 11. by 12 Ann. c. 1. c. 2. sect. 1. and 10. by 30 Geo. 2. c. 4. sect. 4. Duties how to be levied, 2 Will. & M. fass. c. 2. 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
Man may be exported, and the excise now repayable.

1 Will & M. Jiff. 1. c. 22. sect. 1. Relating it, what to forfeit, 1 Will. & M. Jiff. 1. c. 22. sect. 2. Excise on foreign man not to be repaid on exportation, 1 Will. & M. Jiff. 1. c. 22. sect. 2.

Sanctuary from the Saxon mund, i. tutela, defen- s, and prius, finita. Some would have it to signify an interference of privileges, others would that it denotes frument iorum, because mund ius also, mundit. Is of later time it is expended duorum partes, for mundi- nis duorum servituri, the two lands, therefore munditio must be the breaking of these fencs, in many parts of England we call manod: and we say, when lands are fenced in and hedged, that they are surrounded.

Sanctuary, Peace, and manudecres a breach of the peace. Leg. H. 1. c. 37. 66.

Sanctuarium, (from the Saxon mund, i. tutela, defen- s, and prius, finita.) It would signify an interposition of privileges, and therefore the ill of keeping the field, evidence, charters, &c. of such church, college, &c. such evidences being called muniments, corruptly min- imerum, from munus, to defend; because inferences and privileges are defended by them. 3 parl. Jiff. 2. 700.

Sanctuarium, See Muniments.

Sanctuarium, A grants or charters of the Kings and Princes to churches; so called, because cum omnibus munimium against all who would deprive them of those privileges. Cowell, edit. 1727.

Sanctuarium, The consecrated bread, out of which a little piece is taken for a communicant. In- ferret: in sanctuarium quod nos manus ececle- stilium, &c. Alb. 2 tom. pag. 283.

Sanctuarium, (Muragium.) A bill or tribute to be levied for the building or repairing of publick walls. F. N. B. fol. 227. It is due to either by grant or prescription. C. 2 parl. Jiff. fol. 222. Murage feemeth also to be a grant to a town or the King, for collecting money towards the wailing of the fame. Stat. 3 Ed. 1. cap. 10. Murage forfeited for being taken otherwise than it was granted. Stat. ib.


Murder, (Mortem.) From the Saxon mund, which fame will have to signify a violent death; from which the barbarous Lat. murdre, and murdrum. Sometimes the Saxons expiated it by murdred; and murder, a deadly work; in French morte, in Spanish morte, in English murder: A word in use long before the reign of Canute; but we cannot find that the Saxon mort signi- fies a violent death, but generally mens. Amongst us it's taken for a willful and infamous killing another upon presumed malice. Bracton, lib. 3. titul. 2. cap. 15. num. 1. defined it thus: Homicidium, quod nulli pretiata, nulli audita, nulli victimae clam pretiosae. Bracton, cap. 6. is of the same opinion, fo is Fleet, lib. 1. cap. 30. adding besides, that it was not murder, except it were proven in the rape, or against a German, and no foreigner; But Stannard, pl. Cas. Lib. 1. cap. 4. foys. The law on 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 privily or publicly, English man or foreigner living under the King's protection; and this provision is made for, 11 Ed. 3. 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 fence, or such like. Crown. Jiff. Peace, cap. Of murder, fol. 70. Per juro of murderer in grants, la graütio danae de avertemur de murderis. Bracton, ut. Quoniam, 2. But formerly it was taken only for a clandestine killing; for amongst the Romans antiquitas displicere eis interfexus, or murdrum, vel quemdam necat, necat inuenisse, non adjunctum est, nisi quis quis murdrum faceret. 


Muratorum operato, The service of work and labour done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle. From which the word derives, being by ed. by and hedged, that they are surrounded.

H. 1. c. 37. 66.

Muratorium, See Metal.

Munitius, Duties on them. 11 & 12 Will. 3. c. 3.

Munitus, Duties to be levied on walls, and a place where fedge grows; a place over run with moss. Cowell, edit. 1727. See Bullfinch.

Muder, (from the Fr. morter) Is to flue men an- other arms, and to inroll them in a book, as appears by flat. 18 Hen. 6. c. 19. So mynded of record in the fa- ulty, is to be inroll in the number of the King's solders. Master of the King's murderers. 2 Ed. 6. c. 2.

Muder-maker general, is mentioned in flat. 35 E. 4. See Master of the King's murers.

Muder of soldiers, See Soulders.

but there and kind, in, therefore of. It: feft, consequently have them, and consequently subject the criminal to the fame kind of judgment and execution, as such a conviction would do. 2 Hawk. Pl. C. 329, cap. 30, sect. 9. S. P. Stir. 391, a. S. P. D. 265, pl. 4. Misch. 3 & 4 E. F. P. 161, sect. 17. [Which spm] is of civil force.] The matter must be evi- dent or probable, to constitute the party of the mere whereof is arraigned, or otherwise that he be a notorious felon, or openly of bad fame, and therefore he be subject to the judgment for the satisfaction of this statute and charge of his duty, to examine the evidence which was the prisoner guilty of the fact, before he proceeded to a judgment of pain for & &d; dure; yet the Serjeant will be found to have any book which takes notice of any of them, that is right to be for the flow of the act. There are books that held with great authority, that in case of appeal the prisoner flanding mute shall have judgment of pain for & &d; dure, do prove that such judgment was before the making this act; for this statute extends not to appeals, which are the suit of the subject, but only to the fact of the King, which is by way of indictment, and herein the words of Festa are very remarkable, Si autem appellatus nihil rejindere velit, &c. appellatus inde pejor Judith. indeus, indeus, muta, muta non condemnabitur, sed judicabitur commissurus, &c. and these facts do not yield up, for if he should have strong and hard imprisonment, and therefore none of him in this statute, but remaining as they were at Common law, the obstinacy of a criminal in standing mute them, may be of itself without more, a sufficient ducement to a judge to award him to his pence; but infcrving therefore appeals and indictments are within the me reason with those mentioned in the statute, and it is certain how the Common law stood in relation to civil matters, as appears by the best authors differong among themselves concerning them, and seeing the method prescribed by the statute is very just and equitable, feems prudent at least in the judge to observe the fame ducement of this kind, 2 Hawk. Pl. C. 329, p. 30, sect. 4. And will not put themselves! The act speaks only of in-increase of the fact of the King; but the judgment of pain for & &d; dure was at the Common law, both in appeals and indictments. 2 Inf. 177, 2. If this fault. This act extends not to the suit of the party by appeal, because as before the judgment of pain for & &d; dure was at the Common law in appeal and indictment, S. P. Ten. 123, pl. 51. Shall have strong and hard imprisonment? Some hold from these words, that the punishment of pain for & &d; dure was given by this act; others held, that at Common law for felony the prisoner flanding mute should upon a nihil sit be hanged, as at this day it is in case high treason, and, as they say, in case of appeal; others held, that at Common law, in favour of life, he should neither have pain for & &d; dure, nor have judg-
day he shall have three loaves of bread made of barley, without any drink, and the second day he shall drink as much water as he can at three times of water which is not to the door of the prison, except running water, without any bread, and this shall be his diet till he be dead.


Sufficient Hawkins says, that the manner of inflicting this punishment may be found in the books of equity, the manor books, all of which generally agree, that the prisoner shall be remanded to the place from whence he came, and put into some low dark 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 can bear and more, and that he shall have no manner of suffenance but the worst 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 continue to die till he be dead. 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 penury by putting himself upon his trial, which he cannot do at this day after the judgment of penance once given. 2 Hawk. Pl. C. 330. cap. 30. f. 16. And there in the margin, the ferjeant, as to the remainder to him to place where be come, cites H. P. C. 227. S. P. C. 150. (E), Keilh. 70. a. 4 Ed. 14. 17. Abs. Br. Carne 160. 2 Ifl. 178. Ra. Ent. 385. pl. 17. 8 Ed. 4. 1. pl. 2. And as to the words in same low dark room, he says, that the clause is omitted in Keilh. 70. a. 4 Ed. 11. pl. 18. But is mentioned in all the other books above cited, and with this difference, that 14 Ed. 4. 17. pl. 17. fay only he 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, etc. he says, that in all this the above books cited seem to agree. And 14 Ed. 4. 8. pl. 17. and S. P. C. 150. (E), and 2 Ifl. 178. add, that if he shall lie without any heat or other thing under him, and be drawn to one quarter of the room with a cord, and the other to another, and that his feet shall be used in the same manner. But that these clauses 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 Keilh. 70. a. fays, that the head shall not touch the earth; but none of the other mention either of these clauses. And as to the words, that as many weights shall be laid upon him as he can bear and more, etc. he says, that in all this the above books agree cited. And as to the word bread, he fays, that 14 Ed. 4. 17. S. P. C. 150. (E), 2 Ifl. 178. and 8 Ed. 4. 1. pl. 2, and Keilh. 70. a. fays, that he shall have three loaves of barley bread a day. Keilh. 70. a. that he shall have only rye bread, and Ra. Ent. 385. pl. 2. and 2 Hen. 4. 1. pl. 2. generally, that he shall have of the worst bread. And as to the word water, he fays, that in 14 Ed. 4. 8. pl. 17. S. P. C. 150. (E), 2 Ifl. 178. and 8 Ed. 4. 1. pl. 2, and Keilh. 70. a. fays, that he shall have the water next the prison, so that it be not current; but Ra. Ent. 385. pl. 5. is general, that he shall have the worst water. And as to the words, not to eat the same day in which he drinks, nor drink the same day on which he eats, etc. he fays, that this is omitted in Keilh. 70. a. and in 2 Hen. 4. 1. pl. 2. and as to the words till he die, he fays, this is omitted in none of the above books cited, except 14 Ed. 5. 4. 11. and H. P. C. 237. But that neither of these books give the whole judgment at large. Hawk. Pl. C. 329. 331. cap. 3.

For more learning on this subject, see 15 Vin. Abr. tit. Mute, and see Observations on the Statutes, chiefly ancient, etc. p. 51-54.

mutual debt, See Debt and debts.

mutual promise, is where one man promises to pay money to another, and he in consideration thereof promises to do a certain act, etc. such promises must be binding, as well as one act as the other, and both made at the same time. Hol. 58. 1 Salk. 21. Where there are mutual promises, and one of the parties die, where the other party could not charge the executor on the promise of the testator; yet 'tis here said the promise by the survivor shall continue, Tyl. 133. But it is held, that on mutual promises and covenants, equal remedies are o both sides; tho' the performance need not be precisely actual, Ed. 2 Hen. 8. 12. 33. 138. See Mut. 14.

Mutuum. If a man oweth any person 10l. he hath a note for the same, without feal, action of debt lies upon a mutuum; but in this there may be wager or law, which there may not be in an action upon the oath on an implied promise of payment, etc. Comp. Atorn. c. 2. 11.

Mutius. In a legal understanding, signifies to borrow or to lend. 2 Sound. 291.

Mutius Scaevola. A person dumb and deaf, and tenant of a manor, the lord shall have the wardship an cusality of him. 2 Crc. 105. If a man be dumb deaf, and have understanding, he may be a grantor or grantee of lands, etc. 1 Co. Inf.

Mutipry. (Mysteries, from the Fr. mysterie, i.e. artificium.) An art, trade, or occupation.

N.
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 residing seven years in the plantations naturalized, 13 Geo. 2. c. 7, extended to the plantations, 2 Geo. 2. c. 44.

Sacrifice 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. 6. 20 Geo. 2. c. 44, sect. 5.
Foreign seamen serving three years in the whaling fisheries naturalized, 22 Geo. 2. c. 45, sect. 8.
Excluded from offices of trust, 22 Geo. 2. c. 45, sect. 10.

Nee to inherit by 14 H. 3. c. 6, but such as were capable to take at the death of him who died till feised, 25 Geo. 2. c. 59.
Foreign proletants serving two years in America, naturalized, 3 Geo. 3. c. 25.

See also:

Sacrifice, was that duty which was incumbent on the tenant to carry his lord's goods in a ship, Liber finis ab suis cariis, raevus, etc. Ann. 1606, 932.
Natural taxes, See Ships, Seamen.
Navigation, See Ships, Seamen.
Nativus, Nativitas, A small dish to hold the frankincense, before it was put into the thurible, censer, and thence thence into the chalice, and thence into the thurible run vasti. Parv. anf. pag. 56. I seems fo called from the shape, resembling a bun or little ship, as a cogue of brandy for the like reason. Cowell, edit. 1727.

Litus crenulare, The near or body of the church, as distinguished from the choir, and wings, &c. It is that part of the church where the common people sit, which being the longest part is so called; and camera epiroholi savium cariss. De Cona. 26. 3. 5. 6.

Bish. Bishops, See Bishops.

Bish. Bishops.

But admitter, A writ that lieth for the plaintiff, in a spurious plea, or him that hath an action of darenfium profenitum depending in the Comon Bench, and the form that the bishop shall admit the clerks of the defendant, during the suit between them, which writ must be filed within six months after the avoidance, because after six months the bishop may prefer by lapse. Reg. Orig. fol. 31. P. N. B. fol. 37.

Necesity, Law charges no man with default where the act is compulsory and not voluntary, and where there is not a conront and election; and therefore if either there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason, as in pretumption of law man's nature cannot overcome, such necessity carries a privilege in itself. Bac. Elem. 25.

Necessity is of three sorts; necessity of conservation of life, necessity of obedience, and necessity of the act of God or a stranger. Ibid.

And frift of conservation of life: If a man feel viands to satisfy his hunger, this is no felony nor larceny. Ibid. But if such necessity be owing to his unthriftiness, fully it is far from being an excufe. Hawk. Pl. C. 93. cap. 33. sect. 20. So if divers be in danger of drowning by the casting away of some boat or barge, and one of them get to some plank, or on the boat's side, to keep himself from falling into the water, and another to save his life, they thrust him from it, whereby he is drowned, this is neither se defendendo, nor by midventure, but justifiable. Ibid—S. P. Hawk. Pl. C. 73. cap. 28. sect. 26.

So if divers felon be in galo, and the galo by casuality is set on fire, whereby the prisoners get forth, this is no escape nor breaking of prison. Bac. Elem. 25.

So upon the statute, that every merchant setting his merchandise on land without satisfying the outlimer or agreeing for it, (which agreement is confirued to be in 5 T certainty)
certainly) shall forfeit his merchandize, and it is so that by tempt a great quantity of the merchandize is thrown overhead, w. relation to merchandize agrees with the customier by intimidation, which falls out short of the truth, yet the over quantity is not forfeited; where note, the necessity dispenses with the direct letter of a statute-law. 

So if a man have right to land, and do not make his entry for terror of force, the law allows him a continuance, which shall be as beneficial unto him as any entry. 

The second necessity is of obedience; and therefore where ban and fome commit a felony, the feme can never be necessary, nor the law inten-tions her to have no will in regard of the subjeétion and obedience the owes to her husband. 

So one reason among others, why ambaffadors are used to be excused of practices against the state where they reside (except it be in point of conspiracy, which is against the law of nations and society) is, because no congé whether they have it in mandatis, and then they are excused by necessity of obedience. 

So if I have a warrant or precept from the King to fell wood upon the ground whereof I am tenant for life or for years, I am excused in wafe. 

Thid. 

The act of God, or of a stranger; as if I be particular tenant for years of a house, and it be overthrown by great tempeft, or thunder and lightning, or by flooded floods, or by invasion of enemies, or if I have belonging to it some cottage which has been infected, whereby I can procure none to inhabit them, nor workman to repair them, and to they fall down; in all these cases I am excused in wafe; but of this last learning when and how the act of God, and strangers do excuse, there are other particular rules. 

It is to be noted, that necessity privileges only usual laws other duties; for in all cases if the act that should deliv-er a man out of the necessity be against the common-wealth, necessity excuses not; for privilegium non valet contra rem publicam; and another says, necessitas publica maior ej quam privata; for death is the last and faithest point of all particular necessity, and the law imposes it upon every sober, that he prefer the urgent service of his prince and country before the safety of his life; as in danger of tempeft those that are in the ship throw over other men's goods, they are not answerable, but if a man be commanded to bring ordinance or manure to relieve any of the King's towns that are distressed, then he cannot refuse, and he can pass tempeft judgments by order, if forth as to them, and for that it is broken by the Romans, when he alleged the fame necessity of weather to hold him from embarking, necesse eft ut eam, non ut vivam. So in the case put before of husband and wife, if they join in committing treason, the necessity of obe-dience does not excuse the offence, as it does in felony; because it is against the commonwealth. 

So if a fire be taken in a street, I may justify the pulling down of the wall or house of another man to save the row from the spreading of the fire; but if I be affailed in my house in a city or town, and difficult, and to throw down the wall, I can be necessary, while the forces and takes hold of other houses adjoining, this is not justifiable, but I am subject to their action upon the case, because I cannot rescue mine own life by doing any thing which is against the commonwealth; but if it had been but a private trefpafs, as the going over another's ground, or the breaking of his incolure, when I am put forth for the safeguard of my life it is justifiable. 

The common cafe proves this exception; that is, if a mad-man commit a felony, he shall not lose his life for it, because his infirmity came by the act of God; but if a drunken man commit a felony, he shall not be excused, because his infirmity by his own fault for the rea-son that loss or deprivation of will, and election by ne-cessity, and by infirmity, is all one, for the lack of ar-bitrium fulfillm is the matter; and therefore as infirmatis culpabilis excuses not, no more does necessitas culpabilis. 

Bec. Elem. 29. 

Uncertainties and barlets of glafs imported, What duties to pay, 4 Will. & M. c. 5, fett. 2. 

Uncertainties, What sorts of neckcloths are not chargeable by 10 Ann. c. 19. 12 Ann. b. 2. c. 9. fett. 5. and Records. 

Uncertainties, Importing it prohibited, 13 & 14 Car. 2. c. 13. May be exported duty free, 11 & 12 Will. 3. c. 3. fett. 15. 

The great Rignon, Is a writ to restrain a person from going out of the kingdom without the King's licence, F. R. H. 93. 

By the Common law every man may go out of the realm to merchandise, or on pilgrimage, or for what other caufe 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 can command a man that he go not beyond the feast, or out of the realm without licence; and he do the contrary, he shall be punished for disobeying the King's command; and it seemeth that this command may be made by the King's writ under the Great seal, and also the Privy Council, and also by the law the subject is not entitled to take notice of every writ the King's seals in such cafe, as well as of the Great seal. F. N. B. 85. (A) 

A writ of Ne exeat Regne may be granted in any cafe where there is danger of subftrage from the juflice of the nation, though of private concernment. 2 Camp. 35. 

So the King's seal in Holm Ch. 9 the King may inhibit any man; for if the caufe is not tra-verse. 

The great Rignon ought not to be granted but upon great reason and examination, otherwise a homine repmj giunia may lie; for Hol Ch. J. Farr. 9. Pajh. 1 Am. Bl. 77. 

A solicitor's bill being taxed, and reported over per 60 l. on motion, and admissit of his going beyond see, Ne exeat Regne was granted, though no bill was in cause whereon to ground this writ; for Matter of the Roll Chan. Prec. 171. Mil. 1701. Lynd v. Cardy. 

A Ne exeat Regne lies to prevent one's going into Sa-land, it being out of the jurisdiction of Chanery; as the preces thereof not reaching theith is equally mischi-ous to the suitor here, as if he actually were out of the kingdom; and though it was moved for one defended against another defendant, yet it being in a matter of no conse-quence, and both parties are after, and money being worn do from the defendant against whom the Lord Harcourt thought the motion proper. Wm's Rep. 263. Trin. 1714. Don's case. 

Where the party is to be restrained from going to Sa-land, the condition must be not to go out of the realm or to Scotland; for if it be only not to go out of the realm, the party going to Scotland will not forfeit no more by his refusal.
iner in it; but left the parties to proceed in the old beaten path.


It is now most usual where a suit is commenced in his court against a man, and he designing to defeat the other of his suit demand, or to avoid the justice and equity of this court, is to go out of the way, so that the duty will be excused if he goes.

P. R. C. 251.

If the suit be granted on behalf of a subject, and the party taken, what is generally done is this; The party other gives security by bond in such form as is demanded, or he fasting a writ (an answer is not already in) or by affidavit, that he desigins not to go out of the realm, and gives such reasonable security as the court directs, and then he is discharged.

P. R. C. 253.

While this was accounted a writ of grace, if the party, whom the writ was, had answered and denied the equity of the plaintiff's bill, and the court law no cause to the contrary, the writ would be superseded.

P. R. C. 52.

See 15 Vin. Abr. 537—539.

Negligence, Is a proposition by which something is ened; also a particle of denial, as, not. John. As to negligence, every person is liable in every thing to be in one form, although it be spoke in it affirmative, it includes in it negative, as the auteur of Wyjs, cap. 4. of a qualis et decretis is, that he demand shall vouch as he tenet eniss in priere brev, etc., includes a negative, viz. and non negative, for it is certain, that if the writ was a forse facialis, and the tenant in the qualis en decretis manifesta title of it, the demand shall not vouch for; he shall vouch as he tenet eniss in priere brev, etc., which is as such as to say, that he shall vouch, as he tenet eniss in priere brev, etc., in the other manner, and then in the sale, in a form of a forse facialis he could not vouch for more than he can now. Poul. C. 206. b. 207. a. Arg. to phara, in case of Strading v. Morgan.

The defendant swore an affirmative, and afterwards a information was exhibited against him for it; tho' an negative could not be proved, yet the court directed that he should vouch their their probable evidence, and that he should dehend afterwards prove his affirmative if he could. Cumb. 57. Trin. 3 Jac. 2. B. R. The King. Comes. Comes.

Two negatives may be confined as a negative in facts, but not in pleas; for they are to be treated as Latin terms, not as Latin оборот, for instance. Poul. Sul. 328. Trin. 2 Anu. B. R. Dillin v. Harper.

Negative may be implied by an affirmative, but not necessilary or contra. As the saying, that a par guiltless of a person, shall not take by devile, does not necessilary imply that it he does converse, he shall take by de-

2 Wm. 2. Wm.'s Rep. 9. Pafj. 1722. in case of ill v. Felix.

Where a truth of a term for raising portions for authors directs a particular method for raising them, implies a negative, that they shall not be raised by other way. 2 Wm.'s Rep. 19. Pafj. 1722. in case of B. v. Gry v. Green.

An affirmative oath was made to ground an attachment upon; if the person 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 to. 8 Med. St. Trin. 8 Gre. The King v. Ash- worth et al.

Negativa pregnant, (Negative pregnant) Is a negative, implying also an affirmative: As if a man being impleaded to have done a think on such a day, or in such a place, denich that he did moro & firma declarata, which implicch nevertheless, that in such a place, he did it not in hand in fee, and he faith he hath not aliened in fee, that is a negative pragnant; for though it be true that he hath not aliened in fee, yet it may be, he hath made an eflate in tyl. Dyer. fol. 17. num. 95, and Break bis tituls, and Kitchen. fl. 237. and the Terms of the Laws. We read also in some Cov-
over. The plaintiff took letters of administration to the
surviving trustee, and filed and B. mortgaged the
land, which was 150l. per annum, to J. S. and B. co-
venient to pay the money. B. entered and took the
profits, and paid the interest, but none of the 150l. p. a.
principal, and died without issue. I. ante, declaratory ob-
fer, the plaintiff was entitled only for 21 years,
or three lives determinable on any number of years not
exceeding 120, and decreed, that (the 150l. being to
be paid out of the annual profits as they arose) the re-
cue of B. was the receipt of the daughter herself as
to those in remainder. J. & B. could not, unless she
purchased her place, be held to be legal estate as admini-
strator to the surviving trustee, and was also effect to
trust, the profits received by B. shall go in satisfaction of so much of the 150l.
and the refund to be charged on the remainder. But decreed
further, that what might have been raised by letting
leaves according to the power by way of fine, if B. had
appraised his estate chargeable with the money, and
so had taken the benefit of making such leaves, that they
must be accounted for by the remainder man the defen-

Negro. In trover for 100 negroes, and upon Not
guilty, pleaded, a special verdict found that the negroes
were bought and sold in America as merchandise, by the custom
amongst the merchants, and that the plaintiff had bought
them, and was in possession of them, and that the defen-
dant took them out of his possession. It was argued,
that no property can be in the person of a man whereupon
the property in the person of him that refuses to give
property can be in villains, unless by compact or conquest.
But the court held, that they being usuall bought and
sold amongst merchants, and being infidels, a property
may be in them sufficient to maintain the
action; and gave judgment for the plaintiff with costs
this term. But at the next term, upon the prayer of the
attorney general to be further heard, day was given
to the next term. 2 Lees. 201. Trin. 29 Car. 2. B. R.
Burtt v. Penny.

In trespass the court was, that the defendant of &
armis uum Ethipicum (Angeles vocat. a negro) suis quer-
tentis petit 100l. apud Londini. &c. took and carried
away, and kept the plaintiff out of possession of the fals
 negro from that time suavie diem exhibitionis billis praefiti,
per quo he loft the uie of his fals negro. Upon Not
guilty the jury found, that the negro had been baptized
after the taking; upon which a question was made, whe-
ther the neglecting of the baptism
was a just cause to
the cause of the eather; she
gave no opinion; but held, that trespass lies not; because
a negro cannot be demanded as a chattel, nor can his
price be recovered in damages in action of trespass, as in
case of a chattel; for he is no other than a flavel
servant, and the master can maintain no other action of
trespass for taking his servant, but such only as concludes
quod pretidum amit, in which the matter shall re-
cove for the loss of his servant, and not for the value,
or for any damages done to the servant. Judgment qua
demanda nil capiatur per billiam. Carith. 396. Hill. 8 W. 3.
B. R. Chamberlin v. Harvey.

In indigutia afferit the plaintiff declared for 20l.
for an negro into his hand by the plaintiff to the
defendant, viz. In parochia Beate Marie de arcubus in toarda de Cheope,
a veredit 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 averred in the declaration, that the fals was
in Virginia, and by the laws of that country negroes are
falsable; for the laws of England do not extend to Vir-
ginia, which being a conquered country, their law is what
the King pleases, and we cannot take notice of it but as
fals. And the prayer directed, that the plaintiff
amend the declaration, which should be made that
the defendant was indebted to the plaintiff for a negro fold
here at London, but that the fals neglo at the time of the
fals was in Virginia, and that negroes by the laws and
flatteries there are falsable as chattels. And then the at-
torney general coming in, that they were inheritance,
transferrable by deed and not without. And nothing
was done. 2 Salk. 666. Smith v. Brown and Cooper.
'Trover lies not for a negro; for men may own,
and therefore not the subject of property; and the court
judged, that in Grossol quae coitionem ex consorti,
the plaintiff might give in evidence that the property was
his negro, and he bought him. 2 Salk. 667, Mich.

Drift. (Native. Fr. nef, naturall.) Is a bond-wom-
man. Stat. 1 Ed. 6. 3. and 9 R. 2. cap. 2. But if
the hind was a negro, and he be freed, and be
the be once free, and clea by disaffordance of all bondage,
the cannot be nef after, without some special act done
by her, as divorce, or confession in a court of record;
and that is in favour of liberty, and therefore a free woman
shall not be bound by taking a villain to her husband;
but their issue shall be villains as their father was,
which is contrary to the Civil law, which favours
perfect ventrem 9 Rich. 2. cap. 2. See Nefius. Ancient
lords of manors bid, gave or assigned their bondmen and
women. Couw. edit. 1727. See Manumission, Nefus.

Nefus. There was an ancient writ called suiifi of
neifs, whereby the lord claimed such a woman for his
neif, wherein but two neifs could be put; but it is now
quite out of use.

He iniuitur verbs, Is a writ that lies for a tenant,
who is distrained by his lord for other services than he
ought to perform, and is a prohibition to the lord,
commanding him to stay his suit. The special use of it
is, where the tenant has formerly prejudiced himself, by
performing more services, or paying more rent without con-
frant than he needed; for in this case, by reason of the
lord's seftin, he cannot avoid him in overrun, and there-
fore is driven to this writ, as his next remedy. Reg

See trial, See Trial.

Querceves, Colore mandat Regis, quorum annos inven-
untur neifi e celestis minus juget. Reg. of Writs, fol. 61.

News and St. Christopher, The sum of 103.003
414. 44. distributed among the proprieors and inhab-
tants, 9 Ann. c. 23. fol. 88. 10 Ann. c. 34. 5 Geo.
c. 32. 8 Geo. c. 10. 20. fol. 43. 13 Geo. 1. c. 7. f. 10.
1 Geo. 2. fol. 2. c. 8. f. 24.

Newcastle upon Tyne, Kees in the haven to be
measured and marked, 9 H. 5. c. 10. 30 Car. 2. fol.
c. 1. c. 8. 6 & 7 H. 3. c. 10.

Masts would be shipped in the harbour but at New-
castle, 21 H. 8. c. 18.

Fifth, falt or provisions excepted, 21 H. 8. c. 18.

The mayor, &c. of Newastle may pull down water
in the river, 21 H. 8. c. 18.

Gasfide annexed to Newcastle, 7 Ed. 6. c. 10.

Repealed, 1 M. f. 3. c. 3.

Goldsmiths, silversmiths and plate-workers incorpo-
rated, 1 Ann. f. 1. c. 9. sect. 4.

Newfoundland. See Fish, Greenland.

Newgate marketplace, To be leased to the city
of London, 22 Car. 2. c. 11. f. 61.

Newhaven. See Harbour.

Newmarket, On the night of the Jfie-night. The
poll for knights of the shire may be adjuncted to 17 & 8 Wilk. 3. c. 25

New River. See Witle.

News. See Minder.

News-papers. See Stamps.

New Nile. See Calendar.

New York, Salt how imported from Europe thither.

3 Geo. 2. c. 12.

North, Anciently used for Lincoln. In f猪e petition
in torri London, 30 Ed. 1. 7 E. 1. & jeffe alb.
Cassil. edit. 1727.

Cunn. Anciently used for London. In f'ase petition
mat under the title: The adove party pleaded, The in-

petio
petition is not to be granted, because though he had a judgment for certain lands and houses, yet the house, no pollocation whereof he defir'd to be put, is not contained among those, for which he hath judgment. Cowell, d. 1727. Reg. Placit. 155a. 15

mire, (Mentioned in the frat. 29 Car. 2.) To fulfill judgment to be had against one by nient dire'ts, i.e. by not denying or oppressing it, by default. Cowell, dit. 1727. Sec 15 Vis. Ac. 553.

Sir Robert, The Black Dick in the Exchequer for

Titil, or Titill, is a word which the sheriff anwers, that is apotted concerning debts illegible, and that are nothing worth, by reason of the insufficientness of the parties from whom they are due. S. R. 2. flat. 1. 3. and 15. 

Accounts of null shall be out of the Exchequer. S. R. 2. cap. 13.

Tilip capiat per duce, is the judgment given against the plaintiff, either in bar of his action, or in abatement of his suit. Cw. on Lit. sal. 323.

Tilip brit, is a failing to put in answer to the plea of plaintiff, by which a man omits, judgment paffeth against him of course by nihil dictat, that is, because he says nothing in his own defence, why should not. Cowell, edit. 1727. Reg. Placit. 138. 39.

Tilip capiat per villam. See Titil capiat per

Titil pritus, is a write judicial, which lies in case here the jury is impanelled, and returned before the files of the bank, the one party or the other requisitioning this write for the case of the country, whereby the court is willing to cause the inquest to come to Wiffminfier at a certain day, or before the judges in the me county at their coming. Sec 14 Ed. 3. cap. 15, he form of the writ you have in the Old Nat. Law, fol. 39, and in the Regy. Judicil, fol. 7. & 28, & 75, & it is called a writ of nifi pritus, of these two words, whereby the sheriff is commanded to bring to Wiffminfier every man impanelled at a certain day, or before the judges the next affixe, nifi die Lune apud tale locum praitnr, &c. And the justices of nifi pritus must be one them, before whom the cause is depending in the nch. F. N. B. fol. 240, which he taketh from the file of the knight, as the nifi pritus, which is a form omit, illnesses which are of eazy examination may be determinded before justices by nifi pritus, St. Wyfman. 2. 13 Ed. 1. 30.

Judgment may be given at nifi pritus in dower prentum and quere impedit, St. Wifman. 2. 13 Ed. 1. 35. 

Illures may be made at a writ of nifi pritus, as in the case of the fame issue of the same suit, St. de Fund. Lewat. 27 Ed. 1. 1. 4.

Illures in a plea of land may be tried at nifi pritus before or two justices of the place, St. Edor. 12 Ed. 2. 1. 1.

Justices of nifi pritus may record defaults and nuisances, Ecor. 12 Ed. 2. 1. 1. 4.

Nifi pritus shall be granted as well at the suit of the defendant as of the plaintiff, 2 Ed. 2. 1. 16.

Nifi pritus shall be granted in attains, 5 Ed. 3. 3. 23 Il. 8.

Justices of nifi pritus shall be granted before the justices of assay, Ecor. 14 d. 3. 1. 1. 16.

Justices of nifi pritus may give judgment in assise of irret prentum and que impedit, 14 Ed. 3. 3. 1. 16.

The panel shall be deemed in court and flown to the place of trial, 42 Ed. 3. 4. 11.

Shall be granted at the suit of the jurors after the third thres, 7 R. 2. c. 7.

Justices of nifi pritus may give judgment in assise of lord and treason, 14 H. 6. 1. 1.

For the return of jurys at nifi pritus, 35 H. 8. c. 6.

Causes laid in Atlatufca, may be tried at nifi pritus, S. E. 12. within eight days after term, 12 Geo. 1. 31. within fourteen days, 24 Geo. 2. c. 18. f. 5.

For other matters, see Exchequer, Jury, Justices of llife, Vol. II. n. 108.

Wiffminfear. Wifloumen; because they lived near high mountains covered with snow, especially in Cacmarthenhire; they are so called in our historian. — Cam aestuata Nivicolones Buttones Regia sic expulit, Da Cane. 13. 30.

Goulde, Was an ancient kind of English money now not in use; the value thereof, in the 33d year of Edward the Third, viz. 1360, 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: —

"De berey ne sede de Lyin yegere au Roq. d'Anglettere trois milliers d'ecus dont les deux vauten en noble de la muncy d'Angletterre. We at this day value a noble at six shillings and eightpence, but have no peculiar coin of that name. Cowell, edit. 1727.

Nobility, (Nobilitas) Comprehend all degrees of dignity above a knight, so that a Baron is the lowest order thereof. Smith De Repub. Angl. lib. 1. cap. 17. Barolus in this tract, De Nobilitate, lib. 12. defines it thus: —

Nobilitas de qualitis illata, &c. Cowell, edit. 1727.

In the sixteene times the Earles of counties being officery, were elected by the great Duke in their folknotes, and were removable for male administration. See 3 Will in marg. cites L.L. Edw. c. 35. L.L. Edgari, c. 5. L.L. Conuitt, c. 17. and SaxonChron. sub anno 1055.

Before the time of the 11th Ed. 3. there were but two titles of honour, viz. Earls and Barons. Barons were originally created by a writ or charter by the Crown, and it was all of by Patent, viz. about the 11th Ed. 2. As to earls, they were first created by letters patent; and an earldom confíted in office for the defence of the kingdom. See Brad. lib. 1. c. 8. Comites had their names not from counties, but a comitanda Regem. 9 Rp. 49. It may be added that any office may with a writ or charter be granted, though the earldoms consists of rent and poll duties, which were anciencly great. See Mag. Chart. The relief is 100l. per Hul Ch. J. 2 Salt. 559. Trin. 6 W. & M. B. R. King and Queen v. Knolly.

At the time of the making Magna Charta, 9 H. 3. there was no Duke, Marques, or Vicount in England; for at that time, they had, no doubt, been named in this charter. The first Duke that was created since the conqueft, was Edward the Black Prince, in 11 Ed. 3. Robert de Vere, Earl of Oxford, was in the 8th year of R. 2. created baron Duke in Ireland, and was the first Marques that any of our Kings created. The first Vicount that we find of record, and fate in parliament by that name, was John Beaumont, who in the 18th year of H. 6. was created Vicount Beaumont.

Per Cote Ch. J. The dignities before the Conquest were not patronal, but essential, and the Dukes and Earls of the English kings were chosen by the Barons chosen by the King. The first Duke was a man who was not the man called Duke, and he was raised to the dignity of Duke by the King's tenant assured; and he said he had been chosen before the conquest with the additions of Dukes and Earl. Nay 147, in the case of Andrews v. Wm. If the King gives land to one of his heirs Tenem de Regn for vestitum baronie, he is not a Lord of parliament until he be called by writ to the parliament. These which are Earls and Barons have offices and duties annexed to their dignities of great trust and confidence, for two purposes. 1. Ad fundamentum temporis pacti. 2. Ad defundamentum Regem & patriam temporis bellis; and prudent antiquity have given unto them two ensigns, to refresh and put them in mind of their duties; for first they have an honourable and long robe of fearles, resembling council, in respect whereof they are accounted in law, De Magna Concelio Regis. 2. They are girt with a sword, that they shou'd ever be ready to defend their King and country; and it is to be observed in ancient records the barony (under one word) included all the nobility of England, because regularly all noblemen were Barons, tho' they had a higher dignity; and therefore of the charter of King Ed. 1. the conclusion is, Tктhus archi. episcopi, episcopi, baronius; &c. so placed, in respect that Barons included the whole nobility; and this great council of the nobility, when there were besides Eds. and Barons, Dukes and Marques, were all comprehended under the name De la Cauie de Barbages. 2 Inf. 5. 6.
A. the grand father was called to parliament by writ
B. the son was summoned to parliament several times by writ, and after was disabled by act of parliament to claim any dignity, &c. be defec
C. the son was summoned to parliament by writ, and as youngest was, and died, leaving D. his son upon a petition by D. to be resorted to the seat of A. the great grand father; it was resolved by the judges, upon a reference to them by the committees, that 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 to him, 22ly, That the acceptance of a new creation by C. cannot hurt D. because C. was disabled at the time, and when Nolle was not the lord, 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 therupon D. was accordingly conducted to his said seat. 11 Rep. 1. Ann. 39. Elec. 1. Delatorre's cafe.
See Peters. 

D. the see. See Appovements.

Notes a no ten de ferma. We often meet in Donesday with toto de ferna, or forma toti nostrum, which is to be understood of entertainment for so many nights. See Domesday, tit. Jefua. Rex bundred de Cheresford, in tunc recte habitatorium dominorum demerito de fina de ferna, & 10 li. &c. 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 Clarendon, anno 824. Et ibi finita & præcepta centesimae eorum episcopit post 30 noches iam præsidentem ad fecundum dominatum 26. And so it continued to the time of H. 1. Leg. c. 669, 70, and from thence 'tis usual at this time to pay a fevensight or fortnight. Cowell, edit. 1727.

Noldys or Noldy. Was a word well known among the Saxons to signify necessary fire, being derived from the Saxon nold, that is, necessary, and from the word nold, but the learned Spelman is of opinion from the old Saxon ned, i. obsequium; so that noldys were fires made in honour of the Heathenish deities. Cowell, edit. 1727.

Nolle prosequi. Is 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 the non-joinder is a defect for non-appearance; but this is a voluntary acknowledgment that he hath no cause of action. 2 Lit. P. R. 218.

In trefails of baterry and imprisonment, &c. If defendant pleads Not guilty to part, and a justification for the refusal, upon which a demurrer is joined, the plaintiff

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Nolle prosequi. Is 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 the non-joinder is a defect for non-appearance; but this is a voluntary acknowledgment that he hath no cause of action. 2 Lit. P. R. 218.

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Penalties on being at conventicles, 16 Car. 2. c. 4. 12 Car. 2. c. 1.

Justices, &c. may break open doors, 22 Car. 2. c. 1. 12 Car. 2. c. 1.

Husbands of peers who are resident, not to be ejected, 22 Car. 2. c. 1. f. 19.

If wife convicted, penalty to be levied on the goods of the husband, 22 Car. 2. c. 1. f. 16.

Nonconformist ministers prohibited to come within six miles of a corporate town, 17 Car. 2. c. 2. prohibited to teach school, 17 Car. 2. c. 2. f. 4. 2 Am. f. 2. c. 7.

The penal laws not to extend to protestant dissenters taking the oaths, 1 W. & M. c. 18. 1 W. & M. c. 18. f. 18. 17 c. 2. f. 18. 2

Beats differing from the law to bear parish offices may be 17 c. 2. 1, m. 17 c. 2. f. 17. 2

Abuses intituled to privileges of dissenting ministers, W. & M. f. 1. c. 2. f. 18. 7. 2

Protestant dissenting ministers freed from parish offices, 17 c. 2. f. 11. 17 c. 2. f. 11.

Dissenting ministers suffering from bad habits, 5 Geo. i. c. 4. 5 Geo. I. c. 4.

Permits of the episcopal communion in Scotland, 1 Ann. c. 7. 1 Ann. c. 7.

Penalty on dissenters being at conventicles in their habits, 5 Geo. I. c. 4. f. 2. 5 Geo. i. c. 4.

Episcopal meeting-houses in Scotland to be registered, 2 Geo. 2. c. 38. 2 Geo. 2. c. 38.

Penalty on unqualified ministers officiating in Scotland, 2 Geo. 2. c. 38. f. 5. 2 Geo. 2. c. 38.

Episcopal ministers in Scotland to be ordained by a bishop of England or Ireland, 1 Geo. 2. c. 38. f. 11. 1 Geo. 2. c. 38. f. 11.

Peers and others present at unlawful meeting-houses in Ireland disqualified from voting, 19 Geo. 2. c. 38. f. 11. 19 Geo. 2. c. 38. f. 11.

Form of affirmation to be taken instead of an oath by the members of the University of Oxford, 22 Geo. 2. c. 50. 22 Geo. 2. c. 50.

Privileges granted to the members of the Universities of Oxford and Cambridge, 22 Geo. 2. c. 50. 22 Geo. 2. c. 50.

Non derivando. A custom or precept of non derivando is to be discharged of all taxes. See Littif.

Non derivendo, is a writ compelling under its particular circumstances, according to divers cafes, which fee in the table of Reg. orig. verb. non derivendo. Cowell, vit. 1777.

Bono, (None) According to the Roman account, see those days which at the beginning of some months or fix, of others had four days, according to the vesper:

See Nona Main, October, Julius & Mars, Quadrans at relinqu. &c. —

The Nones in March, May, July and October, are the fix days next following the first day, or the calends. In other months they are the four days next after the first, but the first of these days is properly called nones, and the other required according to the number distant from none, as the third, fourth or fifth none. They are called nonas, because they begin the ninth day before the ides. Dates deeds by none, ides or calendis, is sufficient. 2 Inst. f. 615. Spelman in his Glossary interprets it for meridi, mid-day, dinner-time, which we in English call the half of the day or a third part of a day. Nones are generally so called in Latin, Harum nonas, id svt, generalissimam, riam, non meridiam, and as he interts, Ratio a Romanam camae dulta svt, quae hora dicit nona svt, nec

Non excellit ante censendum, Cowell, edit. 1777. See Ides.

Non est culpabilis, is the general plea to an action of trespass, whereby the defendant doth absolutely deny the fact imputed to him by the plaintiff, whereas in other special cases the defendant but alleges the want of his own defence: And therefore when the rhetoricians comprise the substance of their discourse under three questions, as fit, quid fit, quale fit; this answer followeth under the first of the three, and as it is the general answer in an action of trespass, that an action criminal, civilly prosecuted; so it is also in all actions criminally followed, either at the suit of the King, or other, wherein the defendant denieth the crime objected unto him, Cowell, edit. 1777. See Stamps, Pl. Cor. lib. 2. cap. 62. and Crefpha.

Non est rem. An answer to a declaration, whereby a man denieth that to be his deed, whereupon he is impeached. See Dvd, Obligation.

Non est inveniendum, is the sheriff's return to a writ, when the defendant is not to be found in his bailiwick. See.

Non est facus, is an offence of omission of what ought to be done; as in not coming to church, wherein which need not be alleged in any certain place; for generally speaking it is not committed anywhere: But non facus shall not make a man a trespasser, 1. Hacek. 13. Hob. 251. 8 Rep. 146.

Non implacabili, aliquem de libere tenimento factum habere, is a writ to enjoin a tenant or possessor, to desist from entering any man without the King's writ, touching his freeold. Regifcr, fol. 171.

Non intrinsece, quando breve de patrifice in carcere habebit imperatur, is a writ directed to the justices of the bench, or in eyes, willing them not to give one that hath, under colour of granting some King to land, &c. as holding of him in capite, deceitfully obtaining, the writ called Pratice in capite, but to put him to this writ of right, if he think good to use it. Reg. Orig. fol. 8. 4. But this writ had dependance on the court of wards, and therefore is now become out of use.

Nonururces. See Darty.

Non mercaturendo vidualitas, is a writ directed to the justices of assize, commanding them to inquire whether the officers of such towns do sell vidoals in groats, or by retail, during their office, contrary to the statute, and to punish them if they find it true. Regifcr. Writs, fol. 124.

Non mulctandó, is a writ which lieth for him which is mulcted, contrary to the King's protection granted him. Regifcr. Writs, fol. 74.

Non obstante, (Notwithstanding) is a clause frequent in statutes and other public acts, and a licence from the King to a thing which at the Common law might be lawfully done; but being restrained by act of parliament, cannot be done without such licence. Vaughan, Plutal. 501. 502. car. 150. In the reign of King Henry the Third, says Sir Richard Baker, the clause non obstante (if brought in by the pope) was taken up by the King in his grants and writings. See Pryme's Animadversions on 4. Inst. fol. 129. See Dispensation, Grant of the King, Prerogative.

Non omit. pug. quia nonam liberat. Is a writ that lies where the sheriff returns upon a writ to him directed, that he hath by force of a statute or statute, which hath the return of the writ, and he hath not served the writ; then the plaintiff shall have this writ directed to the sheriff to enter into the franchise, and execute the King's procés himself. Old Nat. Brev. fol. 41. Of this the Regifer Original hath three arts, fol. 82. & 151. and the Register General one, fol. 5. 59. And the sheriff shall warn the bailiff, that he lie before the justices at the day contained in the writ, and if he come not, then all the judicial writs, during the same plea shalling, shall be writs of non amissit, and the sheriff shall execute the same. Cowell, edit. 1777.

Constitution was and is yet, 9 E. 3. 2. That none therefor should lose his land because of non-plevin; that is, when the land was not replanted in due time. Ralph de Henham gives this good account of
it—Caveat ibi veni definitus, quod in fo 15 din terram
jux capite in manum D..mini Regis repugnit, quod
venit, ac adominam potens proxima die placuit ambit
ferramenta terrae facta per definitum—Et ibi definito
executor Gallic nonvenite, & et ibi definito executor
Portugallam nonvenite—In Honore unde, c. 18, p. 82.

Non procedendo in affirm. & juravit, is a writ faun
founded upon the Facts of 1 Wall. 2d, c. 38, & Arti-
culier part Chartes, c. 9, which is granted upon di-
vers cases to men for the freeing them from offens &
jurat, particularly by reason of 1 Car. 6, P. N, D. f. 153, & the
Register, f. 100, 119, 181, 183.

Non procedendo ad affirnum Rege inquitulent, is
a writ to stop the trial of a cause appertaining unto one
that is in the King's service, & until the King's plea-
chambers be heard, & the Register, f. 183, p. 82.

Non putes. 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; & thereupon a non pro, & Practi. Sei.
222. And a plaintiff may enter a non pro against one
defendant, where there are two that fewer in their plea,
before the record of the cause is set down, if the first
plea is filed at his peril, it is to be tried at the affizes; but it is said there cannot be a
non pro at the trial of the affizes. 3 Sai. 342. Tho'
action against several defendants, it has been ruled
otherwise. 2 Sai. 456. Non pleas have been frequent
upon informations; but never upon informations, till the
recent 1 Charles H. 2d. See Belle prosequi
& Nonfuit.

Non-residence, is applied to those spiritual persons
that are not resident, but do absent themselves willfully
by the face of one month together, or two months at
several times in one year, from their dignities or benef-
ices, which is liable to penalties, by the statute against
non-residence. 21 H. 8. c. 15. But chaplains to the
King, or other great persons, mentioned in this statute,
and the 25 H. 8. c. 15. may be non-resident on their
livings; for they are excused from residence whilst
they attend those that retain them: And bishops are not
prohibitable by virtue non-residence: But if a bishop
be a deanery, parofhage, &c. in common with his bishof-
rick, he is punishable by the law. 21 H. 8. for non-re-
idence on the fame. Also where bishops are non-resident on their bishopricks, they are liable to ecclesiencal cen-
fure, and the King may give a mandatory writ for their
attendance, & compel them to it by imposing upon them.
their temporalties, a notable precedent whereof we have in
the cause of the bishop of Hereford, in the reign of
King Henry 3. 2 Eng. 645. See Residence.

Non-residence etia Christi Regis, is a writ di-
rected to the ordinary, charging him, not to min-
der a claim to the King's service, by reason of his

Non face memor. (Non face memor.) Is an ex-
ception taken to any act, declared by the plaintiff or
defendant to be done by another, and wherein he grounds
his plaint or demand: And the effect of it is, that the
party that did that act, shall be made answerable well in his
writ when he did it, or when he made his last will and testa-
ment. See Non compas meatus.

Nonence. Where a matter fet forth is grammatically
right but absurd in the fense, and unintelligible,
we cannot reject some words to make sense of the rest,
but must take them as they are; for there is nothing to
aburd 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 whatsoever pre-
cedent, there the precedent matter which fense shall
not be defeated by the reguppacy which follows, but that
contradiction shall be destroyed, as in every
ment where the declaration is of a demine the 2d of
January, and that the defendant poftas, felleter the 11 of
January, and that the defendant poftas, felleter the 11 of
January, elected him; here the felleter may be rejected
as being expressly contrary to the poftas, and the prece-
B. R. Hytt. v. Dyer. 16 1. 622. Words un-
ecessary might in construction be omitted or rejected,

tho' they are not repugnant or contradictory, but in ce-
tes annulrs agreed with the Ch. J. Ibid. See Spittak.

Non solvere perennius, ad quam claras et ensme
non pas non renunfaria, is a writ prohibiting an ordi-
nary, or plaintiff in an action, incapable of declaring
the King's for non-rerunfia. Reg. of Writs, f. 59.

Non-fuit. (Non of poftas, &c.) is a renunciation
of the suit by the plaintiff or defendant, most commonly
upon the discovery of some error or defect, when the
matter is not in a condition, as the jury is ready at the
last to deliver their verdict. The Civilians term it
Renunciationem, Concl. Where a plaintiff is demanded and doth not appear, he
is said to be non-fuit; and this usually happens, where
upon the trial, and when the jury are ready to give their
verdict, the plaintiff discovered some fault or defect in
his suit, or is unable to prove a material point, for
want of a necessary witness, &c. and thereupon the pla-
int may be demanded, (as he must be) his default is recorded
by the fecondary, and the entry is in misericordia quis
poftas et breve poftas; upon which the defendant to
cover his costs against him; but this arising from some
supposed neglect or oversight, the plaintiff, except
some particular cases, is not barred from commencing
new suit. For the form of the entry, see Cr. Tra.
213. 2 Leem. 177. 4 Med. 86. 2 Sal. 345.

When a plaintiff is non-fuit, if he will again prose-
ceed in the action, he must put in a ne exequandis,
by his being nonfuit, it shall be intended that he had a
such cause of fault 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.

4. Who may be non-fuit; and in what actions, and
what time there may be a non-fuit.

It is everywhere agreed, that the King being in fu-
peition of law always present in court, cannot be so
fuit in any information or action wherein he himself
the sole plaintiff; but it is held, that any informer
may sue or be sued in a popular action, may be nonfuit,
well in respect of the King as of himself. Bro. 91
Ca. Lit. 139 b. 2 Roll. Ab. 131.

If an infant bring an affiz by guardian, albo'
infant disavow the suit in proper person, yet no non-
shall be awarded. 39 Cott. pl. 1. 2 Roll. Ab. 130. S.
pen. If the infant need not make his assiz he
shall pay costs upon a non-suit, and the naming his
self executor shall not exempt him from it. 6 Ab
181. If an attorney of the Common Pleas fues an assiz
there, he shall not be demanded, because he is upon,
always present aiding the court. 2 H. 6. 44 a. 1
Abs. 581. S.C.

A person may be nonfuit in a writ of error. 2
Roll. Ab. 130. 1 Stard 255. S.P.

A person may be non-fuit in a writ of false judges
20 H. 6. 18 b. 2 Roll. Ab. 130. S.C.

False suit in an action in which he is:
be, and thereafter he becomes an
A person may be non-fuit, yet not being originally so,
be non-fuit as an awason; so of garnishers who become billers,
not be so. 22 Ed. 4. 10.

So if a person outlawed hath a chasre of pardon, al-
ues a faire faires against the party, tho' hereby he is
actor, yet he cannot be nonfuit. 2 Roll. Ab. 130.

So if a man traverse an office he cannot be non-fuit,
albe he is an actor, for he hath no original pend
against the King. 2 Roll. Ab. 130. Dyer 141. pl.
this is made a quare.
be taken for the benefit of the dead; and so it is in action of trespass, as executors, for goods taken out of their own possession.

2. Like law in action, as executors by the receipt of their own hands. Co. Lit. 139. a. See 

in an audita querela concerning the personalty, the nonuit of the one is not the nonuit of the other; because it goeth by way of discharge, and freeing themselves, and therefore the default of the one shall not hurt the other. Co. Lit. 139. a. In an audita querela, forefias, attaint, the nonuit of one shall not prejudice the other. 6 Co. 26.

3. In a quod juris clamat, the nonuit of the one is the nonuit of both; because the tenant cannot attorn according to the grant. Co. Lit. 139. a.

An appeal ab abatement, whether they plead the same or several issues, it hath been adjudged, that a nonuit against one, at the trial of any one of the issues, is a nonuit as to all, because a nonuit operates in nature as a release of the whole. 

4. An appeal ab abatement, whether they plead the same or several issues, it hath been adjudged, that a nonuit against one, at the trial of any one of the issues, is a nonuit as to all, because a nonuit operates in nature as a release of the whole. 2 Co. Lit. 139. a. See 1 Bl. P. C. 184.

5. If there be judgment to account, and auditors affigned, but thereupon a capias ad computandum, the plaintiff cannot be nonfuted on the original, because the original is determined by the judgment to account. 2 Roll. Abr. 131. 3 Leam. 28.

6._SECTION 1. WHEREAS, upon verdict found before any justice in a title of real defeller, mort d'ancerel or any other action whatsoever, the parties before this time have been adjusted upon difficulty in law, upon the matter so found; it is ordained and established, that if the verdict pass against the plaintiff, that the same plaintiff shall not be nonfuted.

But notwithstanding, as in the former, it hath been held, that the plaintiff may be nonfuted after a special verdict, or after a declaratory judgment thereupon. Co. Lit. 139. a. 2 Ten. 2. 3 Roll. 132. 4 Leam. 28. 5 Bl. P. C. 184.

If in debt the defendant acknowledges the action as to part, and joins issue as to the residue, and the plaintiff hath judgment for that which is so confessed; but there is a capias ad computandum to be affected by the jury; if the plaintiff be nonfuted in this issue, this shall be a nonuit for the damages to be given, because he had judgment. 2 Roll. Abr. 134.

If in trover for devises goods the defendant pleads, that as to some of the goods they were fixed to his freehold, as to others that he had them of the gift of the plaintiff, and as to the rest Not guilty; and as to the freehold the plaintiff enters non volet ulterius preques; this amounts only to a retractatis, and is no nonuit, so as to bar the plaintiff from proceeding on the other parts of the plea, on the rule, that a nonuit for part is a nonuit for the whole. 2 Leam. 177. Sir John Sanders v. Pojac Brocas.

Of the effect of a nonfuit and of its being a temporary bar.

A nonuit, as hath been observed, is regularly no peremptory bar; but the plaintiff may, notwithstanding, commence any new action of the same or like nature; but this general rule hath the following exceptions.

1. It is peremptory in a quae impetis; and in that action a discontinuance is also peremptory; and the reason is, for that the defendant had, by judgment of the court, a writ to the bishop; and the incumbent, that somet thing in by that writ was removed, which is a flat bar to that presentation. Co. Lit. 139. a.

2. Nonuit in an appeal of murder, rape, robbery, &c., after appearance, is peremptory, and this in factum vitae; but the nonuit of the plaintiff in an appeal is not such an acquittual, on which the defendant shall recover damages against the executors, by Wyth. 2. cap. 12. unless, after the nonuit, he were arraigned by the King's suit upon the appeal, and acquitted. Co. Lit. 139. a.

3. So if the plaintiff, in an appeal of mayhem, be nonfuted after appearance, it is peremptory; for the words therein are felonie mayhem. Co. Lit. 139. a.

A nonuit after appearance is also peremptory in a native habeas, and the nonuit of one plaintiff in that action nonfutes both in favorum libertatis; for in a liberate procedendo such nonuit is not peremptory, neither is the
NOT

Proces of the warden court shall only be executed in Northumberland, Wiltshire, and Northumberland and Newcaste, 31 H. 6. c. 2.

Tindale made part of Northumberland, and the farmers to find securty to stand the law, 11 H. 7. c. 9.

The county court shall be kept at Alnwick, 2 Ed. 6. c. 25. 3rd.

Sherriff shall account as other sheriffs do, 2 & 3 Ed. 6. c. 25. 3rd.

Inquiry in the decay of houes and tillage in the northern counties, 2 & 3 P. & M. c. 1.

Hexamshire united to Northumberland, 14 Ed. c. 13.

Commission to inquire of the decay of houes in the northern parts, 23 Ed. c. 4.

Sherriff made felony in the northern countries, 43 Ed. c. 13.

For refrrepping robberies in the northern countries, 43 Ed. c. 13.

Provisions for preventing theft and rapine upon the northern borders, 7 Ed. 1. c. 1. 13 & 14 Car. 2.

20 & 21 Car. 2. c. 2. 24 Ed. c. 57. 4th.

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. 2.

The acts for preventing theft and rapine on the northern borders shall be deemed public acts, 6 Geo. 3. c. 57. 5th.

South Wales. See Wales.

Wiltshire. See Wiltshire.

Nor, Shifting or cutting it off, where felony, 22 & 23 Car. 2. c. 2. 11.

See Wiltshire.

Notary, (Notarius) mentioned in stat. 27 Edw. 3 c. 2. 4th, a feeble or forreinner that takes notes, or make a short draught of contracts, obligations or other documents. Clau. Edw. 2. m. 6. Schulfa confuta sed memb. de notaribus imperialibus non admissi. At this day we call him a meyory or public notary, that atted deeds or writings, to make them authentick in sevve countries, but principally in business relating to merchandize.

Not a fine, Nota finis, Is a brief of a fine made by the clerigher, before it be Ingrellis; for the whereas see in H. Symb. part 2. tit. Fasts, sect. 11.

See Proces.

Not guilty, See Non exit culpabili.

Stettin, Is the making something known, that a man was 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 was not liable to, and his effect in a degree of prejudice. Ca. Lit. 350. 35.

The plaintiff and defendant are both bound at the peril to take notice of the general rules of practice this court; but if there be a special particular rule court made for the plaintiff, or for the defendant, he whom the rule is made ought to give notice of this unto the other: and else he is not bound generally to take notice of it, nor shall he be in contempt of the court, though he do not obey it. 2 L. P. R. 204 cites Py 24 Car. B. R.

It a declaration be engrossed and put into the off, although it be not filed, yet is the defendant's attornies not to protest against it. Also it is 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 defendanth'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 particular case, and if he fail not, he is not bound generally to take notice of it, nor shall he be in contempt of the court, though he do not obey it. 2 L. P. R. 204 cites Py 24 Car. B. R.

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Novel Difficulties. Such affi8e, and affife of Mordant-er, where and before whom to be taken, M.C. 9 H. 5 of law. 
St. Wiffm. 2. 13 Ed. 1. b. 1. c. 10. 30. 
May be adjourned for difficulty, M.C. 9 Ed. 3. c. 12. 
2 H. 4. c. 7. 
Re-difficult, how to be inquired of and punished, 20 H. 3. c. 3. 13 Ed. 1. b. 1. c. 26. 
In what cases an affi8e of novel diffi8en lies, St. Wiffm. 1. 3 Ed. 1. c. 24. St. Wiffm. 2. 13 Ed. 1. c. 18. 
25. 46. 
And at what times, 3 Ed. 1. c. 51. 13 Ed. 1. b. 1. c. 10. 30. 
Tenants may plead by bailiff, 13 Ed. 1. b. 1. c. 25. 
34 Ed. 1. b. 1. 13 Ed. 2. b. 1. c. 1. 
The danger of taking a false exception, 13 Ed. 1. b. 
1. c. 25. 34 Ed. 1. b. 1. De conjunctiva foattis. 
The record, how to be certificed, and re-examined, 
13 Ed. 1. b. 1. c. 25. 
What the judgment on a diffi8en with robbery or force, 3 Ed. 1. c. 37. 4 H. 4. c. 8. 
What to be done on a plea of juntenancy, 34 Ed. 
1. b. 1. De conjunctiva foattis. 
An affi8e of novel diffi8en given against the person of the profites, 1 R. 2. c. 9. 4 H. 4. c. 7. 11 H. 6. c. 
3. 
May be taken against the patronize of the crown, 1 Hen. 4. c. 8. 
Copies of the panel to be delivered to the parties six days before the seffions, 6 H. 6. c. 5. 
See Affi8e of Novel Difficulties, and Diffi8e. 
Novellam. Thofe confections which were made by emperors after the publication of the Teofian Codex, were called Novellae. Afterfau calls the failure edition by that name; and that barbarous translation which was made in the time of Bocifas, he calls the authenticis, 
which are books of the Civil law. Cowell, edit. 1727. 
Novels, Liter. No perfon flall put any noyles, ficks, thorns, hair, or other desirable thing into any broad woolen clot, 
&c. 23 Jac. 
Nubes collocates, To gather small nuts, or hazle nuts. This was one of the works or fervices imposed upon inferior tenants. Perus, Antig. p. 695. 
Nude crown, (Nudum pactum) Is a bare promife of a thing, without any confideration; and therefore we 
lay, No nudo pafta non victus admia. Cowell, edit. 1727. 
See Consideration. 
Nude matter. See Matter. 
But tief 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. 
Nummum, Civitas Com. reddt, ad nummum, Demofidas; that is, by number or tale, as 'tis called. And Libra profata vel ad punctas, was by weight. 
Pecunia in numeris, ad nummum, numerata, was the ancient and ufual refervation, and toppoped to be intended in all grants, unless the contrary was exprefed. Vide Rule of Sheriff, caufa. pag. 25. 
Nummata terrae, Is the fame with Denariatus terrae, 
and thought to contain an acre; Scinis me (s. Will. 
Longfde) deftifti & censitfiffi ecclefie S. Marize de Walbingham & canonici hodie Des ferventibus in perpetuum 
Elefaymon a 40 nummata terrae in Waltingham, quae 
fael decorat & Brecon ffrum, fui de pice Waltingham, libere, 
quieta & hontaria obfine small feruete & small comitadura. 
Spelman. 
Nummata, Signifies the price of any thing by moneyn, 
as demarita doth the price of any thing by computation of peace, and libratio by computation of pounds. Cowell, edit. 1727. 
Numm. (Numma) 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 
woman, departed from the world, and devoted to an efsential 
service of God and adherence to God. See De conventorum fines, and such like holy 
excresces. St. Hesomon tells us, that this was an Egyptian word, 
as Hifioplin recordeth of him in the book D' Origins & 
Progriffi Monachatus, fol. 2.
BEVOR.

[Text continues from the previous document page]
managers, set up, formed, or continu'd such play-houses, such company of actors, shall cease, determine, and come absolutely void to all intents and purposes whatsoever.

Provided, sec. 5. "That no person or persons shall be authorized, by virtue of any letters patent from his Majesty, his heirs, successors or predecesors, or by the
ance of the Lord Chamberlain of his Majesty's household the time being, to act, represent, or perform for hire, in or reward, any interlude, tragedy, comedy, opera, farce, or any other play or parts thereof, in any part of Great Britain; ex
cept in the city of Westminster, and within the liberties thereof, and in such places where his Majesty, his heirs, successors, shall in their Royal persons reside, and during such residence only.

And fent. 6. It is further enacted, "That all the penalties shall be inflicted by this act, for offences committed within that part of Great Britain called England, and the town of Berwick called Tweed, shall be recovered by bill, plaint or information in any of his Majesty's courts of record at Westminster; in which no other pro-
ation or wager of law shall be allowed: And for offences committed in that part of Great Britain called Scotland, by action or summarty complaint before the court sessions or judicature there; or for offences committed in any part of Great Britain, in a summarty way before to justices of the peace for any county, countrey, riding, town, city, or liberty, where any such offence shall be committed, for any act or omission of one or more, either willfully or
wittingly, or by the condition of the offender; the
me to be levied by distress and sale of the offender's ods and chattels, rendering the overplus to such offender, if any there be, above the penalty and charges of fines; and for want of sufficient distress the offender shall be committed to the house of correction in any such county, countrey, riding or liberty, for any time not exceeding six months; these to be kept to hard labour, to the common good of any such county, countrey, riding or liberty for any time not exceeding six months, are to remain without bail or main-prize; and if any person or persons shall think him, her or themselves aggrieved by the order or orders of such justices of the peace, he shall and may be lawful for such person or persons to appeal thereunto from the next general quarter fes-
s, to be held for the county, countrey, riding or Liberty, whereof order therein shall be final and conclusive: if the person or persons aggrieved shall give bond, or suffer jury to the information, or person suiting or procuring for the same, the other moiety to the poor of the
earth where such offence shall be committed.

And fent. 7. It is further enacted, "That if any
in
trude, tragedy, comedy, opera, play, farce, or any entertainment of the stage, or any other acting, singing, or performing in any court or place where wine, ale, beer or other liquors shall be sold or retailed, the same shall be deemed to be acted, represented and performed for gain, hire and re-
card.

Provided that every prosecution, for any offence within this act, shall be commenced within six calendar months from the offence committed."

It was formerly said, that the erecting a dove house on man's own fruicke-tenement was a nuisance; because the iegons and doves were to be accounted tame animals, as much as they had animal instinct; and that the
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earth where such offence shall be committed.
But it is clearly agreed, that common nuisances against the publick are only punishable by a publick prosecu-
tion; and that no action on the case will lie at the full of the party injured; as this would create a multiplicity of actions, one man being as well entitled to bring an action as another; and therefore, in those cases, the remedy must be by indictment at the suit of the King.

Co. Lit. 56. a. 1 Rel. Abr. 88. 110. 2 Rel. Abr. 140. 141. 216. 218. 4 Co. 18. 9 Co. 173. 2 Bruen.

Tazlif. 311. Co. Lit. 614. 3 Leg. 204.

Carol. 191. 1 Salt. 150.

But if by such a nuisance the party suffer a particular damage, as if by hoppung a highway with logs, &c., his horse throws him, by which he is wounded or hurt, an action lies. Co. Lit. 56. 2 Co. 446. 1 Rel. 847. 1 Term. 157. 1 Salt. 136.

Also an action lies for continuing a nuisance, as where, for creating a nuisance a die Febr., the defendant pleaded a prior acretion, but for creating a nuisance die Martii, and a recovery thereupon, and averred that to be the same nuisance and nuisance, and on demurrer the plaintiff had judgment; for though he cannot have a new acretion for the same erection, yet he may for the continuing the same nuisance. 1 Salt. 10.

For more bearing on this subject, see 16 Vin. Abr. tit. Nuisance.

Nóżtegs, (Nuest nusantes) is a spice well known to all, mentioned among spices that are to be garnished with. 1 Ant. 239. 287.

Nutriimentum, Breed of cattle—Quæstíon ccul-

tísmi Dénum non debet venire quam magníscu num inquiri de propriis nutriimentis suis.—Paroch. Antiq. p. 494.

O.

The seven antitheses or alternate hymn of seven verses, &c., sung by the choir in time of Advent, was called O, from beginning with such exclamation. In the old statutes and orders for the church of St. Paul in London, in time of Robert de Diocese, Dean, there is one chapter De cantando, &c., therein is mention of doing four psalm comprehended in one choral invocatio, &c., Liber Statu-
tum Eccl. London. MS. fol. 86.

Oath, &c. (Jura neutrum) is a calling Almighty God to witness, that a testimony is true: Therefore it is aply termed, sacramentum, a holy band, a sacred tie, or solemn ordinance, because it is called a solemn bond because the party when he swears touches with his right hand the holy Evangelist, or book of the New Testament. Coke, 3 par. Init. cap. 74. And anciently at the end of a legal oath was added, So help me God at his holy done, i.e. judgment. Black Book of Heref. fol. 46. 'Tis called Commission purgatis, because allowed by the canons to distinguish it from culpa purgata, &c., by battle, by fire, or water arduo, which was always prohibited by the church, and in small matters, which the plaintiff could not prove, or if he could, and his proof was disallow'd by the court, the defendant might purge himself by his own oath; and this was called jure a propria munus; but in greater affairs he was to bring some other credible performer, 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 there were called sacramen
tales, 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 oaths of twelve such witnesses; and this was called jure deduc-

A new oath cannot be imposed upon any judge, commi-

nissor or any other subject without authority of par-

liament, but the giving every oath must be warranted by
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 per sons in office, &c. required to take the oaths, 1 Geo. 1. c. 13. f. 31.

Seamen and soldiers under the degree of commission or warrant officers to pay nothing for taking the oath, 1 Geo. 1. c. 13. f. 31.

Alterations of the oaths to be taken by presbyters in Scotland, 5 Geo. 1. c. 29.

All persons required to take the oath, or register their efts, 9 Geo. 1. c. 34. 10 Geo. 4. c. 4.

Per sons in the Fleet, or beyond the sea, to take the oaths after their return, 13 Geo. 1. c. 29.

Per sons 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, 2 Geo. 2. c. 31. fett. 4.

Time for taking the oaths and the sacrament enlarged to fix months, 9 Geo. 2. c. 26. fett. 2.

Chaplains, schoolmasters, &c. in Scotland, to take the oath, 2 Geo. 1. c. 33. f. 11. &c.

Further time allowed to members of corporations to take the oaths of office, and to stamp their admissions, 23 Geo. 2. c. 3. 29 Geo. 3. c. 32. fett. 2.

Further 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. 23. 2 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 Glynn Ch. J. Trin. 1656. B. S. If oath be made against oath, in a cause depending in court, this is a null and void answer to the contrary, which oath is true; and therefore the court will take that oath to be true which is to affirm a verdict, judgment, or other act 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 expediting 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 supposed, that the plaintiff hath wrong done him, and that the defendant is the wrong-doer, and may therefore be rather supposed to swear falsely to protect himself from the justice of the law, than that the plaintiff is forced to fly to the law to obtain his right. Pach. &c. 7 Geo. 2. c. 21.

Where there is a suit in Chancery, and there is a single witness against defendant’s oath, ‘is not sufficient evidence to decree against him, nor will the court after that find it to be tried at law, where one witness is sufficient. Hill. 1692. 2 Vern. 283. Cbrifl College v. Wildrington.

There being oath against oath, whether a plea came in in time, it was referred to a trial at law on a feigned issue, to satisfy the convenience of the court, and in the mean time the judgment to stand. Comb. 399. Mich. 8 W. 3. B. R. Collins v. Lamley.

Where the defendant, on his own admission, 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 laid by the Lord Keeper, that he did not see the difference between doing it per prora and per pauca; for to the mind of the court it is the same thing to decree on one witness 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 be 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 is necessity that he hath not the deed. But where the bill seeks no deed, but merely to have the defendants disavow if he had one, 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. Cofl. 11. Anon.* — B. 231. Trin. 26 Cor. 2. Anon. — Carr. R. 59. Tr. 682, contra, Anon. — Nelf. Ch. R. 98. Tr. 14 Cor. 2. Anon. — Cow. Ch. R. 1685. Tr. 17. Anon. — 30. Hill. 185. Nicholton v. Turner. — 3 Chan. R. 5. after Tr. 14 Cor. 2. Anon.

But where no relief can be had on law at the deed, if not lost, but the remedy is only in equity (as in a case of covenant for further alia) these oath need not be made of the lods, per North Ch. J. 2 Mod. 173. in the case of Howard v. Attorney General, — where the bill is for a discovery of the deed generally, and not of a particular bond or deed, oath need not be made of the plaintiff’s not having them. Per Lord MacCulloch. Ch. Pres. 536. 

*Obligata.* Was a rent, as appears out of Roger HucUen, parte seller, Annu. jur. pag. 430. In the Canon law it is used for an office, or administration of an office; and thereupon the word obedientia is used in the provincial constitutions, for thohe which have the execution of an office and power under their superiors. *Lytton, 291. prim. de Statu Regular. It may be that some of these offices called obedientia, confided in the collection of rents, or penfions, and that therefore thohe rents were by a metonymy, called Obligata quia exiguitate ob obedientiaibus. *Cott. & Bocaf. anno 1195. But Obedientia, in a general acceptation, for thohe who feke every thing that was enjoined and ordered by the abbots; and, in more restrained sense, the cells or farms which belonged to the abbey to which the monks were fent, vi ejusdem obedientia, either to look after the farms, or to collect the rents, which were likewise called Obedientia. So in Matt. Parif. anno 1213. In quatuor balcon quos obedientiam denominabant, &c. Cowell, edit. 1727.

Dilt, (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 anniversafy office. *Cra. 2 par. fol. 51. Hillaryon’s cufe. It was held 14 E1ia. Dyer. 315. That the tenant of silt or chantry lands held of subjicks, is extinct by the act of 7 Ed. 6. 14. See also *Cra. 2. c. 13.* The anniversary of any person’s death was called the silt; and to observe such day with prayers and alms, or other commemoration, was called keeping the silt. In religious houses, they had a register or calendar, wherein they entered the silt or octaves days of their founders and benefactors, which was tierces called the* Obligata. *Coward, edit. 1727.*

*Obligata.* See Offerings.

*Obligation,* (Obligatia.) Is a bond containing a penalty, 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. *Cal. in Litt. fol. 172. and Wiffi Symbol. parl. 1. 11. 2. fac. 126.*

Obligation, tais my Lord Coke, is a word of its own nature of a bond or contract, but it is usually taken that the Common law for a bond, containing a penalty with condition for payment of money, or to do or suffer some act or thing, &c. and a bill, that is, is most commonly taken for a single bond without condition. *Cot. Lit. 1721.*

This security is also called a forfeiture; the debt being particularly specified in writing, and the party’s fail, acknowledging the debt or duty, and confirming the contract; rendering it a security of a higher nature than they entered into without the solemnity of a seal; and therefore bonds or securities thus be preferred to simple contracts, it being a higher security, it is held, that for a breach of non-performance an action of debt only will lie. 3 Bus. Ab. 690.

1. Of the nature of the security, called a bond or obligation.

What words create such a security; and of the con- sequence having lost, of the covenant, &c. Is a bill of exchange, and of paying the duty, &c. and of making the bill void.

2. Of the nature of the security, called a bond or obligation.

A bond or obligation is a debt or duty which adjoins to the obligor or debtor, let it be confected where it will and let the debtor fly to what place he pleases, and be chargeable everywhere, and if not be dated from a particular place; and therefore usually begins with Non pro loco datis, so that the place where the plaintiff may lay a place where it was made, that it may receive its, if it be dened. *Cal. Eia. 773. 1 Salt. 441. 3 Le. 348. 6 Mod. 223.*

Alfo in equity a bond is affiabl for a valuable consideration, and the affiance alone becomes intitled the money; so that if the obligor, after notice of an affiance, pays the money to the obliger, he will be entitled to carry it over again. 2 Tom. 959. *Eis. 4. 1723.*

The affiance must take it, fubjed to the fame eflol that it was in the hands of the obligor; as if, on a manufactory, the intended husband enters into a marriage brokerage bond, which is afterwards affiabl to creditors yet it still remains liable to the fairee eflol, and is not to be carried into execution against the obliger. 2 Tom. 959. *Eis. 4. 1723.*

Bonds are to be considered as securities for the perform- ance of contracts, and are usually entered into with par- nalties, which are to be considered as compensations for the breach of the contract; as that a man flall pay a certain sum to his coier or charity, within a sucha time, that he shall pay so much if he does not perform such and such covenants, do or omit fuch and fuch acts; and in the he may cedere fojus, provided the thing be not unali- in itself, or injurious to the public, &c. *Eis. 19. 2 Mod. 201. 1 Sand. 66.*

Bonds are to be understood as bonds of such a sum, on condition to be void on payment of a certain fum; or if man bind himself in the penalty of 100l. that he shall pay 50l. by such a day, doth not perform such and such covenants, do or omit such and such acts; and in the he may cedere fojus, provided the thing be not unali- in itself, or injurious to the public, &c. 2 Tom. 19. 2 Mod. 201. 1 Sand. 66.*
And as the penalty, by the bond's being forfeited, becomes the legal debt; so there was no remedy against such penalty, but by application to the court, or to the obligee, on the security given, which resolves in these cases, of payment of principal, interest and costs; also, that at law there can be no remedy beyond the penalty, because in that the obligee seems to have taken up his security; yet, as it is on the motion of doing equal justice to both parties that equity was to take the case, it may be supposed, that the obligee, compel him to pay the principal, interest and costs, tho' exceeding the penalty. Stear. Pr. Co. 15. 6th Ed. 93. 92. 1 Salt. 525. 1 Vern. 343. 350. Vern. 309.

And the rule of compelling the party to do equity who is estopped to do so is, that where an obligee shall interest after he has entered up judgment for the default, it may be accounted his own rule why he did not take out execution, and therefore not intitled to interest; yet, as by the judgment he is intitled to the security, it does not seem reasonable that he should be prevented from it, but upon paying him principal and the interest, which incurred as well before as after the enrolling up of the judgment. 1st Ed. 92. 268. And by the 4th & 5th Ann. cap. 16. it is enacted, "That in any action of debt shall be brought on any single 11d. or an action of debt, or four farthings, shall be made a good debt upon such plea, and may be placed in bar of such action or suit; and where an 11d. is brought upon any bond, which hath a condition or dearness to make void the same, upon payment of a lelf 11d. at a day or place certain; if the obligee, his heirs, executors or administrators, have been called, and have paid the bond, paid to the obligee, his executors or administrators, the principal and interest due by the dearness or condition of such bond, tho' such payment as not vifually made according to the condition or dearness; yet it shall and may be placed in bar of such bond, and shall be as effectual a bar thereof, as if the condition or dearness had been paid, at the day and time mentioned in the condition or dearness, and had been so placed." And it is further enacted by the said statute, 4th & 5th Ann. cap. 16. That if at any time, pending an action upon any such 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 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 taken to be in full satisfaction and discharge of the 11d. bond; and the court shall and may give judgment discharge every such defendant of and from the same fury.

2. What words create such a security; and of the ceremonies requisite to a bond or obligation; and of signing, sealing, dating and delivering.

Herein we must observe, that the law does not seem to require any particular 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 considered and accounted for upon the same footing as a consideration, and the court shall and may give judgment discharge every such defendant and from the same fury.

Therefore if a man useth this form of words, viz. 

This bill winnoweth, that I A. B. have borrowed 120l. of C. D. Of this form: Memorandum, qued tabi debito to 10 bonds. Ofthus: Memorandum, all things reckoned and accounted between A. and B. cognoscent before to 10 bonds; all these forms are good, and shall 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. 4. So a writing in this form: Memorandum, I A. B. do promise to pay to J. B. 50l. then be in the pretent perfect sense, yet if it hath all other ceremonies effectual, it shall amount unto an obligation. 1 Lev. 25. 5.

So in this form: This bill winnoweth, That I R. S. have received of T. 40l. to the use of R. and J. S. Vol. II. No. 109.

O B L
And though the seal be necessary, and the usual way of declaring on a bond is, that the defendant per se quum from obligatory fappis sigillis fappis latitudinem acknowledged, &c. yet if the word sigillis be wanting, it is cured by verba diem, being pleaded over; or for what is faith per se quum from obligatory, &c. all necessary circumstances shall be intended; and if it were not sealed, it could not be his deed or obligation. 

E.g. 19. a. Cro. Eext. 571. 737. Cro. Juc. 425. 2 Co. 5. 1 Vent. 75. 3 Lev. 348. 1 Salk. 141. 1 Vent. 306.

But this delivery may be effentia 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 false 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 the date, 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 deliverred, though the clause of Gener date be otherwise. 2 Co. 5. Gedard's cafe. Nay 21, 85. 86. Hdb. 239. Stil. 97. Cro. Juc. 156, 264. Yrb. 193. 1 Salk. 76.

If a man declare on a bond, bearing date such a day, but does not pay when delivered, this is good; for every deed is supposed to be delivered and made on the day it bears date, and the plaintiff declares on a date, he cannot afterwards reply, that it was prime delinitiat at another day, for this would be a departure. Cro. Eliia. 773. 3 Lev. 348. 1 Salk. 141.

But if a bond beare date such a day, but was really delivecred at a day after, the obligee may declare on a bond of such a date, but prime delinitiat at a day after; and if the obligee declare on a bond of such a date generally, the obligor may plead it was prime delinitiat on such a day after; but then he must traverse it that was delivered on the day of the date. 1 Brev. Lit. 105. 1 Lev. 196.

If the bond was delivered before the date, on illustr. non est fustain, joined on such a deed, the jury are not eftopped 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. 3 Leb. 332.

In debt on an obligation, the defendant pleads that he delivered it as an ecerow, & his parasus effi verifyfis; this is ill, for he ought to fhow to whom he delivered it, and not to declare if prestimes for fay; & to de poent fe, Cr. 1 Vent. 9, n. 110. 1 Salk. 74.

So pleading that he delivered it to the obligee as an ecerow, to be his deed on certain conditions, is ill; for by the delivery of it to the obligee, it is become his deed absolutely. Hdb. 246. 1 Vent. 9.

A bond or deed may be delivered by words, without any act of delivery; as where the obligee fays to the obligee, go and take the fold writing, or take it as my deed, &c. So an actual tradion, without speaking any word, is sufficient; otherwise, a man that is mute could not deliver a deed; but where on an issue of non est factum, the jury found that the defendant signed and sealed the obligation, and laid it on a table, and that the plaintiff himself, this was held not to be the defendant's deed, without other circumstances found by the jury. Cro. Lit. 30. a. Cro. Eliia. 835. Leom. 193. Cro. Eliia. 122.

If an obligation be delivered to another to the ufe of the obligee, and the ufe is tended, and he refufes, the delivery has lost its force. 5 Co. 119. 8.

3. It's may be obligors and obligees; and of making feral obligors and obligees.

All persons who are ecluded to contract, and whom the law fuppofes have sufficient freedom and understanding for that purpofe, may bind themselves in bonds and obligations. 5 Co. 119. 4 Co. 124. 1-head. 855.

But if a person is ilegally restrained of his liberty, by being confined in a common goal or elsewhere, and, du- ring such restraint, enters into a bond to the principal as a_RENDERING THE REFUND, THE TIME MAY BE AVOIDED FOR DAYS OF IMPROVEMENT. 

And if in reprefent of that power and authority which husband has over his wife, the bond of a fome cozen iffet fales void, and shall neither bind her nor her husband. See Extint and Sett. 

So though an infant shall be liable for his recefure fuch a, mean, drink, clothes, &c. be delivered to, &c. yet if he yield himself in an obligation, with a great fum payment of any of thefe, the obligation is void. Dist. and Stat. 113. Cro. Lit. 172. Cro. Juc. 46. 1 Salk. 112. 1 Salk. 275. Cro. Eliiu. 90. 

So no man, upon a perfon non compeus mentis shall not be allowed to avoid his bond, by reafon of infancy and discretion, because no man can be allowed to flutify himfelf, because of the ill confquences that might afe counterfeit minds; yet may a pravy in blood, as it were, and prives in representation, as the executron to administratur, void fuch bonds; also if a humphc at an office found enters into a bond, it is merely void. 4 C. 124. Beverly's cafe. See Infants and Luminth. 

But if an infant, fome covert, monk, &c. who is disabled by law to contract, and to bind themselves, bonds, enter together with a ftranger, who is under no incapacity, in an obligation, it shall bind the ftranger, though it is voided to the infant. Cr. 1 Rep. 41. 

If a fcarant makes a bill in fain, Memorandum, that have received of Ebedwi Tollos, to the use of my master Sergeant Gundy, the sum of 40 l. to be paid. As it is evident following, and therefore fuch, if he has good obligation to bind himself, for though in the Beginning of the deed, the receipt is faid to be to the ufe of his matter, yet the re-payment is general, and not necessarily bind him who fealed; and the rather, becaufe otherwise the obligee would lose his debt, he having unlodged the fum to Sergeant Gundy. Vell. 137. Talbot to Godbolt. 

Infants, idiots, as alfo fome covertes may be obligee and as to this the husband is fuppofed to affent, being his advantage; but if he difagrees, the obligation had its force; fo that after the obligor may plead new eff fum fum; but if he neither agrees nor difagrees, the bond good, for his conduct shall be afterwards evident, by the confent of the latter, since it is a turn to his advantage. 5 Co. 119. C. Lit. 3. a. 

But a fome covert can neither be obligor nor obligee to her husband, nor vice verfa, being but one person and one ftreict, and therefore opinion, a bond made into fome covert, by the person who in the afterwards marrie is, by the marriage, at law extinguished. See Eadw and Sett. 

An alien may be an obligee, for fince he is allowed to trade and traffick with us, it is but reasonable to go him all that for city which is necessary in his contract and which will the better enable him to carry on commerce and dealings amongst us. Cro. Lit. 129. Mor. 431. Cro. Eliia. 147, 68. Cro. Cap. 9. 1 Salk. 46. Forf. 15. See Aeth. 

Soe corporations, fuch as bishops, prefiders, parson vicars, commanders, fome fome covertes, are therefore a bond made to any of these, fhall enure to them in their capacitres? fo to fuch body politicks can take a citation in fucceflion, unless it be by eftin; but a corpora- tion aggregate may take any charter, as bonds,lectic. in its political capacity, which shall go in fucceflion to the successors in being. Cro. Eliia. 463. Don. 48. a. Cro. Lit. 9. a. 47. a. Hdb. 41. 1 Salk. 465. 

If. A. by his bill obligatory, acknowledges himself to be indebted to B. in the sum of 10 l. to be paid at day to come, and both husband and his heirs in the body of the tenant, to be delivered into the hands of the principal, yet the obligation is void, and he shall be intended to be bound to B. to whom write acknowledged before the 10 l. be due. See Ref. Lit. 179. Pherbus versus Taurus.
OCC

If A. enters into an obligation to B. which he delivers to C. the use of B. through this immediately, upon the execution and delivery to C., becomes the deed of A. yet, if it is preferred to E. he shall appoint; if B. does appoint one, payment to him is a payment to B. and if B. appoint more, it shall be paid to B. kindred.

For more learning on this subject, see 16 Vin. Abt. and 3 Bac. Abr. tit. Obligations; and see Condition.

Obligat. Is he that enters into an obligation, and obliges the person to whom it is entered into. Before the coming in of the Norman (as we read inlegibus) writing obligation were made with him, or other small figns or marks. But the Norman began the making such bills and obligations with a print or seal in wax, set to with every one's special signt, attested by three or four witnesses. In former time many houles and lands thereto paid by grant and bargain, without script, charter or deed, only with the landlord's word or felme, with his horn or cup; and many tenements were demifed with a fur or cuty-comb, with a bow, or with an arrow. Cowell. ed. 1727. See Wang. Odolata terrae. In the opinion of some, contains half an acre of land, others but half a perch. Cowell. ed. 1727.

Obligations (Obligations) offers. 2 Inf. 561. Also, revenue, property of spiritual livings. Stat. 12 Car. 2. cap. 11. See Offerings.

Defenso, Is, according to Spelman, taken for an impediment; it signifies also a tribute, which the lord imposed on his tenants. See Cowell. ed. 1727.


Deestationes. Are estates, whereby Monans speaks at large; the word is derived of scenduci, i.e. harrowing or breaking. So Spelman, and another, verbis Effiri-rium. Effartt suluci decentur, quap adspicat. Occasiones mancipat. Lib. Niger Sacc. cap. 1. par. 13. occupant. Is tenant for term of another's life dies, leaving eftlai que vie; he who first enters shall hold the land during that other man's life, and he is in law called the occupier, because his title is by his first occupation; and so, if tenant for his own life, grant over his estate to another, if the grantee dies, there shall be an occupation. Co. on Litt. cap. 6. sect. 56. and Buller's Rep. 2 par. 11. 12.

If a man leads to f. S. for life, and if S. dies, the land returns to the lefser, because the life being spent for which the land was granted, it must necessarily come back to the old proprietor; but if the life of f. has been made to f. S. during the life of A. and the life of has had deced, leaving estlai que vie, or if in the former case f. 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 receiver could not claim in either case, because he had parted with it during the life of A. in one case, and of S. in the other; and S. 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 for outer vie being dead, his descendants could not claim it, because they were not comprehended in the words of the feudal donation; and therefore the first occupant must be the rightful tenant, since this, like all other things which are derrcile, and without any owner, belongs to the first occupier or posle:ur. Co. Lit. 41. i. Cr. Efhr. 182.

The law of occupancy is founded upon the law of nature, viz. Sejus tertio manu vocas occupantem concedit. So as, upon the first coming of the inhabitants to a new country, he that first enters upon such part of it, and manures it, gains the property (as is now used in Cornucyce), viz, by the laws of the Stannaries; so that it is the actual possession and manure of the land, which was the first cause of the occupancy, and consequently is to be gained by actual entry; Sid. 347. Gisby v. Beveridge. 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 relics did not allow leases for above 40 years, till 21 Hen. 8. 15. And another trial of the land was really he that had right paramount might know how to try his action, but that the lord might know how to avow 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 aver his title. See 20 Hen. Ch. J. Cart. 65. in the case of Geary v. Bonsorft.

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 it, and not the grantee, and on him to whom he is granted. A special case of an occupant to be a tenant to the precipice; see Vaughan Ch. J. Hill. 190 & 20 Car. 2. in the case of Hobbins v. Smallbrook.

If tenant by curtsey grants his estate to another and his heirs, and grantee dies, his heir shall be a special occupant of this estate; 27 Aff. 31. to a Tenant that the grantor was free; for it is alleged that the heir of the grantor shall have the land. 2 Rel. Abr. 141. There shall be no occupant of an estate of a tenant by the curtsey or dower, which are estates created by law. Cro. Eliz. 58.

If tenant pur auser vis makes leas for years to come of his death; a stranger enters; though the stranger is occupant of the freehold, yet lessee for years shall enter upon him, and the lease shall bind the occupant; agreed. Lev. 201. in the case of Geary v. Bonsorft.

If tenant pur auser vis leas for years, in truth for himself for life, and after in truth for his wife for her life; and the lessee for years actually enters, but permits the tenant to bar his entry, who dies, and then the feme enters; the feme shall be occupant, and not the lessee for years. And fo a judgment given in C. B. contrary to the opinion of Bridgman Ch. J. was affirmed per three justices, abante Keyling Ch. J. Lev. 203. Geary v. Bonsorft.

The custom of a manor was, that every customary copholder of that manor might be granted to three persons, habendum to them suerio fide nominandum & non alien. A surrender was made to J. S. and his assignes for his own life, and the lives of two others. Powell J. feem'd to incline that if J. S. had become bankrupt, and the estate assigned, and the assignee had died, living the copyholder; the lord should immediately have the land; and Penn J. thought that upon the death of the copyholder the estate of assignee would determine, tho' the assignee were living. But it was agreed, that if the grant had been to J. S. for the lives of B. C. land, D. and E., and had died, the lord should have the land again, tho' against his own limitation, because there can be no occupant of a copholders estate without a special custom; and this would be no mistake, the failing being on the side of the grantee only. 6 Mod. 63, 66. Mich. 2 Ann. B. R. Smollett v. Pennington. See 16 Fin. Abr. tit. Occupant; and see Life estate.

Occupation (Occupatio) Signifies the putting a man out of his freehold in time of war, and is all one with diffin in time of peace, having that it is not so dangerous. Co. on Litt. fol. 249. Atto use or tenure. So we say, such land is in the tenure or occupation of such a man, that is, in his possession. See DECUMERIA.

Atto trade or occupation, 12 Car. 2. cap. 18. But occupations in the flat. De Biginis, cap. 4. are taken for usurpations upon the King, and is when one usurps upon the King, by using liberties which he ought not. And as an unjust entry upon the King into lands or tenements, is an inturfition, to an unlawful using of franchises is an usurpation. But usurpations in a larger sense, are taken for purpraefitures, intrusions and usurpations. See 2 Inst. fol. 273.

Usurpation. A writ that lieth for him which is ejected out of land or tenement in times of war, as a writ of novel diffin lies for one ejected in time of peace. L. bang. tit. Brief of Novell Diffin.

Seditious, (Offenses.) The eighth day following some pecular testis. See Cites.

Deeds of all, is an old writ mentioned in the statute of Annuities, 15 Ann. 1. which was directed to the sheriff to inquire, whether a man committed to prison upon suspicion of murder, be committed upon full cause of suspicion, or only upon suspicion. Rex. gyr. fol. 133. Bracton, lib. 3. part. 20. 70. And it upon inquisition it were found, that he was not guilty, then his custom should be sent west to the Queen. But now that cause is taken away by the statute of 38 Edw. 3. cap. 9. as appears in Stawndale Pl. Cor. fol. 707. and Co. lib. 9. fol. 566. and Spelman, verbo Asia. Asia was anciently written botia, or buta, for haste, from the Saxon buttan, to wax hot, to rage, afo to hate; for the natural antithesis of occa, as Sir Edward Coke had in his q Rep. fol. 506. and in 2 Inst. fol. 42. See Spelman on Asia.

Decumus. This word was used for the execution of a laft will and testament, as the person who had the decumus or pecuniary deliverance of the goods of the party deceased was the executor from convivial, &c. Decumus illius dominus Georgius Winters yt fordean domino wulveinis. Hilt. Dunelm. and Wharton Angi. Secr. part. 1. pag. 784. See DECUMERIA. Sometimes the word is taken for an advocate or defender; as, summus decumus economical & prettector ecclesie. Mat. Parli. and)f.

Offence, (Delitos.) Is an Act committed against a law, or omitted where the law requires it, and punished by it. Wifam. Synb. And all offences are capital or not so; capital, those for which the offender shall lose his life: And not capital, where an offender may forfeit his lands and goods, be fined or forfeit personal punishment, or both, but not loss of life. H. P. C. 2. cap. 132.

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 25. But the offender shall be in equal degree in them, who are equally tainted with it; and tho' that act and confent thereto are alike offenders. 5 Rep. 80.

Distinctions, Oblations and offerings feem to be on the same thing, and are in a sense some thing of the same nature being offered to God and his church, things real or personal. Offerings are reckoned among personal tithe, and as such come by labour and induftry are paid by servants and others one year to the park or vicar, according to the custom of the place; or the to be paid in the place where the party dwells; or such, part or offering days, as before the statute 2 Hen. VII. cap. in the space of four years then last paid has been used for the payment thereof, and in default thereof Co. 3. Alidigit. Capa. 159. In London, offerings are great a toul. They are, by the law now in force, to be paid as formerly they have been. See flat. 32 Hen. 8. 50. They properly belong to the parson or vicar of the church where they are made; of these some were free as voluntary, others by custom certain and obligator. They were anciently due to the parson of the parish the officiated at the mother church, or chapels that had rochial rights; but if they were paid to other chapels or churches not any parochial rights, the chaplains thereby were accountable for the same to the parson of the motte church, Lindis. C. de ecclesia & cap. Spia quidem. See offerings as at the day are due to the parson or vicar of each, marriages, burials, or churching of women are only such as are collected by the statute 2 Edw. I. ed. 4. and payable by law; this rule seems to extend this right before the making of the said statute, and are recoverable only in the ecclesiastical court. Galsip. Rep. 426, 447.

Stat. 32 Hen. 8. cap. 7. sect. 2. imposes the payne of offerings according to the custom and places where they grow due.

1
OFF  

By flat. 2 3 Ed. 6, cap. 13. sect. 10. All persons  
held by the laws of this realm ought to pay their  
offalgs, shall yearly pay to the parson, vicar, proprietary,  
their deputee, or farmers of the parishes where they  
reside, at such four offering-days as hereunto within the  
last five years left past hath been accustomed, and  
doth this year shall pay for their said offerings at Eggle  
and 3d, 1 the new man Jon.  

The four offering-days are Christmas, Eastertide, Whitsunday,  
and the feast of the dedication of the parish-church.  
Grif. 739.  

Officiorum. A piece of silk or fine linen, to receive  
and hang up in the offices, or occasional oblations in the  
church. Hence in the statutes of the church of St. Paul  
London, it was ordained, Ut justificat certum quod corpora  
podal, velitissima, fertorii & abhorsaria munda fact  
I. 29. b.  

Offic. edit. 1727.  

Officium. The expression that function by virtue  
of a man hath some employment in the affairs of  
other, as of the King, or of another person.  

Cowell, it is, that the word officium principally implies a  
ty, and the next place the charge of such duty; and  
it at a rule, that where one man hath to do with  
other's affairs against his will, and without his leave,  
that is an office, and he who is in it is an officier.  
arch. 458.  

There is a difference between an office and an employ-  
ment, every office being an employment; but there are  
5 payments which do not come under the denomination  
of office; such as an agreement to make has, plough  
ani, which differ widely from that of  
ward of a manor, etc. 2 Sid. 142.  

By the ancient Common law, officers ought to be  
bofd men, legal and legal, & qui nullius fict & publico offici  
tendere; and this, says my Lord Coke, was the policy  
and prudent antiquity, that officers did ever give grace  
to a place, and not the place only to grace the officer.  
Ind. 2d. 456.  

Officers are distinguished into civil and military,  
according to the nature of their several trusts.  
Cardb. 9.  

Officers are distinguished into those which are of a  
pubic, and those which are of a private nature; and herein  
is said, that every man is a public officer, who hath  
the duty concerning the public; and he is not the less  
public officer, where his authority is confined to  
private limits; because it is the duty of his office, and the  
time of that duty, which makes him a public officer,  
whereas the pretence of his authority is given.  
Cardb. 479.  

It hath been held, that the commissioners for purging  
propriations could not take notice of or remove an  
atrey of a court, it not being a public office in which  
the government was concerned. 1 Sid. 93. 152. 1 Lev.  
1. 1. 16.  

Ratm. 94. Hauz's cafe.  

It has been doubted, whether the censor of the college  
physicians, be such an officer as is compellable to take  
eats prescribed by the statute 25 Car. 2. it being  
got, that the oversight and inspection of medicines was  
a private nature; and that no offices were within the  
meaning of that statute, but such as related to the revenue  
and the congregation of the peace; and that particular  
words created for particular purposes were not within  
the statute. 5 Madd. 431. Cardb. 478.  

The King v.  
Mr. Barnwell.  

Also offices are distinguished into ancient offices, and  
also which are of a new creation; and herein it is  
observed, that certain office hath not only enablied the  
re-establishment of such ancient offices as have existetd  
out of mind, but also hath perverted and settled the  
nature in which they have and are to continue to exist,  
what manner to be exercised, how to be dispelled,  
436.  

There is also another distinction of offices into such as  
are judicial, and such as are ministerial offices only; the  
first, relating to the administration of justice, or the actual  
exercise thereof, must be executed by persons of sufficient  
Vol. II. N°. 109.  

The King is the universal officer and dispencer of justice  
within this realm, from whom all others are said to be  
derived; but yet he cannot create a new office in conflict  
with our constitution, or prejudicial to the subject:  

There are three things that my Lord Coke's, which  
have fair pretences, yet are mischievous; viz. new courts;  
new offices; and new corporations for trade; and  
as to new offices, either in courts or out of them, then,  
hes, he says, cannot be erected without act of parliament;  
for that under the pretence of common good, they are  
executed to the intolerable grievance of the subject. 2  
Ind. 540.  

An office granted by letters patent for the sole making  
of all bills, informations and letters мivive in the council of  
York, was held unreasonable and void. 1 Hen. 7.  
Munson v. Eggle.  

One Circuit was permitted 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  
petitioner with or without a fee; and it was refused by  
all the judges at Serjeants Inn, that the erection of such  
new offices for the benefit of a private person, was against  
all law of what nature forever. 1 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 where 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 Bouchamp, 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 resolved unanimously, that this grant was void;  
and that a new office was erected, and it was not defined  
what jurisdiction or authority the officer should have,  
and therefore for the uncertainty it was void. 4 Ind. 200.  
S.C.  

The King cannot grant to any person to hold a court  
of equity, tho' he may grant tenere placites; for the  
delinquement 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. Miltton's cafe.  

So the office of chamberlain of the King's Bench prison  
is inapplicable incident to the office of marshal; and there-  
fore a grant of the office of marshal with a reversion of  
the office of chamberlain is void. 1 1sall. 49. Per Fort  
Ch. J. 1 Lem. 320. 321. Like point.  

So it hath been resolved, that the office of Exempter  
of London and other counties in England, is incident to  
6 A  

the
of the office of Chief Justice of C. B. and that therefore a
grant thereof by the King, the
in the vacancy of a
Chief Justice, is null and void.
Dyer 175. a. pl. 25.
1 And. 152. and see How. Par. Co. Sir Rowland Hai'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 Wiflon. 2. cap. 30. the reasons
whereof are twofold; 1st. For that the law doth ever
appoint the publick interest to have a greater knowledge and full,
to perform the that which is to be done. 2dly. The officers
and clerks are but to enter, interpret, or effect that which
the justices do adjudge, award or order; the insufficient
doing whereof maketh the proceeding of the justices er-
roneous, than which nothing can be more dishonour-
able and grievous to the justices, and prejudicial to the
party. 2 Hift. 425. 4 Hid. 172. cited.
2. Of the office of keeping and selling an office, and
what offices are prohibited to be thus dispon'd of.
The taking or giving of a reward for offices of a
publick nature is said to be bribery; and falsely, says
Hawkins, nothing can be more palpably prejudicial to
the good of the publick, than to have places of the
highest concernment, on the due execution wherein 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 have money able to purchase them; nor
can any thing be a more discouragement to industry and
virtue, than to feque 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 bidder; neither can any thing
be a more corruption to officers to abuse 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
It is said to be malum in se, and indiscute at Common
law. 1 Noy. 102. Mor. 125.
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, steward of the King's
house, the King's chamberlain, clerk of the rolls of the
judgments, the lord chamberlains, barton of the Exchequer,
and all other that shall be called to ordain, name or
make justices of the peace, thores, escheators, custom-
ers, commptors, or any other officer or minister of the
King, shall be firmly sworn that they shall not
ordin, name or make any of the afore-mentioned offi-
cers for any gift or borough, favour or afflction; nor
that none that such by himself, or by others, privily or
openly, to be in any manner of office, shall be put in
the same office, or in any other, but that they make all
such officers and ministers of the best and most lawful
men, and sufficient to their elimation and Knowledge.
And by the 4 H. 4. cap. 5. it is enacted, That no
sheriff shall let his bailiwick to farm to any man for the
time he occupie therof for a
But the principal statute relating to this matter is the
5 & 6 Ed. 5. cap. 16. which is verkaim as follows,
Sect. 1. For avoiding of corruption which may here-
after be happen to be the officers and ministers in the
said county, it be requisite that it be
had the true administration of justice, or forees of
trust, and to the intent that persons worthy and meet to
be advanced to the place where justice is to be ministred,
or any service of trut executed, shall hereafter be
preferred to the same, and no other;
Sect. 2. Be it therefore enacted, That if any per-
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 profite,
directly or indirectly, or take any promise, agreement,
beof, or any assurance to receive or have any
money, fee, reward or other profit, directly or indirect-
ly, for any office or offices, or for the deputation of any
office or offices, or any part of any of them or; or to
the interest that any other shall have, execute or enjoy
any office or offices, or the deputation of any office or
offices, or any part of any of them, which office or offices,
or any part or parcel of them, shall in any wise touch or
concern the administration or execution of justice, or
the receipt, controlment or payment of any the King's
Hightest's treasaur, rents, revenues, accounts, su-
merce, audihtorship, or surveying of any of the King's
Majesty's honours, churches, manors, lands, tenements,
woods or herediments, or any of the King's Majesty's
customs, or any administration, or necessary attend-
ance to be had, done or executed in any of his Majesty's
turned house or him, or the keeping of any of the King's
Majesty's towns, churches or fortresses, being used, occu-
pied 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 to be ministred; that then all and every such perfo
persons, that shall to bargain or sell any of the said of-
ications or deputations, or that shall take any money, fee, reward or profit, or any of the
said office or offices, deputation or deputations, of any
of the said offices, or any part of any of them, or
shall be given any of the said offices, or deputations of
any of any of them, or that shall take any promise, covenant, bond or assurance for
money, reward or profit, to be given for any of the
said offices, or any part of any of them, shall in
only be and forfeite all his and their right to
elate, which such person or persons shall then have of, in
to any of the said office or offices, deputation or deputations
or any part of any of them, or of, in or to the gift or or-
mation of any of the said office or offices, deputation or
deputation of any of the which office or offices, or for the de-
putation or deputations of which office 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 promet
ment, bond or assurance to have or receive any re-
ward, money or profit; but all of all and every for
person or persons, that shall give or pay any sum
money, reward or fee, or shall make any promise, agree-
ment, bond or assurance for any of the said ofides,
for the deputation or deputations of any of the said office
or offices, or any part of any of them, shall immediately
by and upon the same, money or reward given
the said deputation or deputation of which office or offices,
agreement had or made for any of any of them,
reward, to be paid as is aforesaid, be adjudged a disab
person in the law to all intents and purposes to have,
copy and enjoy the said office or offices, deputation or deput-
ations, 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 any promet,
bond or other assurance to give or pay any fee
money, reward or fee.
Sect. 3. "It is further enacted, That all and ever
such bargains, sales, promises, bonds, agreements, co-
nants and assurances, as before specified, shall be void
and against him, and them, by whom any such bargain,
sale, bond, promise, covenant or assurance shall be la
made.
Sect. 4. "Provided always, That any act, or any thing
 therein contained, shall not in any wise extend to an
office or offices, whereof any person or persons is or are
the deputations, for which office or offices, or of
the King's parkership, or of the keeping of
nor, garden, chase or forest, or to any of them, an
thing in this act herebefore mentioned to the con
themselves in any wise notwithstanding.
Sect. 5. "Provided also, That if any person or pe
people shall enter into any thing contrary to the
and effect of this act, yet that notwithstanding
judgments given, and all other act or acts, executed
OFF
one, by any such person or persons offending by authority, or, of the office or deputation, which ought to be inferred, nor of any other thing hath, the dHighlights as is after-foated, after the said offence so by such person committed or done, and before such person, offending for the same offence be removed from the exercise, administration and occupation of the said office or deputation, shall be and remain good and sufficient in law, and the said offence, and such manner and form as the same should or ought to be remained and been, if this act had never been had or made.

Provided also, That this act shall not extend to be prejudicial or hurtful to any of the chief justices of the City of London, or of any corporation called the Corporation of Fish, or to any of the justices of that law be, or hereafter shall be; but that they and every of them may do in every behalf, touching or concerning any office or offices to be given or granted to them, or any of them, as they or any of them might have done before the making of this act; any thing above-men
tioned to the contrary in no wise withstanding."

In the construction of the half mentioned statute the following opinions have been held.
1. That the office of chancellor, regifter and commis
sioner in ecclesiastical courts are within the meaning of the statute, inasmuch as those courts do not only determine matters of faith, but also have the decision of disputes concerning laws and of matrimonies and legitimations of children, which touch the inheritance of the subject; and also hold eas of legacies and trusts, in which respects they are courts of file. Cr. Jac. 390. 3 & 4 Car. 1.
2. It hath been adjudged, that offices in fee are out of
such statute; for if the King be feised in fee of a baili
wick, and he demes the same to A. who demises to B. during the demise to B. is not within the statute; for fees in fee being excepted out of the statute, under which word the rights are also excepted inclusively. 2 Lev. 51. Ellis ver. Reddi.
3. It hath been resolved, that the place of coifferer is
within this statute, and a person having once purchased is place is for ever disabled to enjoy the same; and at the King is bound by this statute. 3 Eliz. 1.
4. It hath been agreed, that the file of a bailiwick of hundred is not within the statute, for such an office is not the administration of judicature, nor is it an office of truth. 4 Lev. 33. Goddard’s case. 4 Adv. 23. S. C. cited.
5. If. A. be by surveyor of the customs, agrees with

that B. shall be his deputy, and that in consideration period B. shall pay A. 600l. and 100 l. annually; and
it is further agreed, that A. will surrender his patent, and procure a new writ under the names of A. and B. which is accordingly, and B. gives A. a bond for performance of the whole agreement; the bond is void, as being within this statute; for though part of the condition, such as procureing a new patent, may not be void within the statute, yet being joined with that which is void, makes the whole void. 2 Adv. 5. 177. Smith. Goddard’s case.
6. It hath been adjudged, that a feat in the six clerk’s office is not within the statute, being a ministerial office only; and they are but under-clerks, who have so much flair for copying, &c. but one judge held it not falsable at Common law for the following reasons; 1. Mi
ment of merit and industry. 2dly; It being a place of extra and exactation and extuation of excessive fees, jelly. From being a great charge to suits. 4thly. It exempts the person, who enter into these fees, in a great measure from the due regulations under which they ought to be; for they are not so easily removed, as if they were at the will of him who hath the disposal of them. Patch. 26 Car. 2. In C. B. Sparrow vs. Rey
off.
7. It has been held, that this statute doth not extend to military officers; and that the 7 & 8. M. which re
fused, or not every commission officer, before his commis
sion is required, should take the oath, there was held, that he had not directly or indirectly given any thing for procuring the commission, but the usual fees extended only to horses, foot and dragoons, but not to the marines. Preced. Oban. 199.
8. It hath been judged, that the file of the deputa
tion of the office of provost marshal of Jamaica, is not within this statute; because this statute does not extend to the plantations. 4 Adv. 222. Salt. 411. Blankard ver. Godd. 2 Adv. 45. S. P. undetermined, and there said arguments, that so good a law should have as extensive a construction as possible.
9. In a written 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. Trin. 9 Geo. 2. in B. R. McCarvary ver. Wrickford.
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 same, that he cannot at any time during his life be restored to a capacity of holding it by any grant or dispensation whatever. Hdb. 75. Co. Lit. 234. Co. Car. 361. Co. Jac. 386.
11. It is held, that where an office is within the statute, and the salary is certain, if the principal make a repetition, receiving a lesser sum out of the salary, it is good; if so the profits be uncertain arising from fees, if the principal make a repetition, receiving a certain sum out of the fees and profits of the office, it is good; for in these cases the deputy by his continuance 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 relating a part of his own, and giving away the rest to another; but where the repetition 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 sale of such office or agreement of office void by the statute. Salt. 468. 5 Adv. 234. Goddson v. Tyler. 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 again pleading the same is pleased is not within any of the prov’s or exceptions in the statute; but that if he be, it must come on his side to fier it. Trin. 9 Geo. 2. in B. R. McCarvary ver. Wrickford.
13. What remedies a person having a right to an office must pursue, to be let into the enjoyment of it, and how a disturbance is punishable.

It is held clearly, that an affife lay at Common law for an office, and that therefore though the statue of 5 H. 8. cap. 25. speaks only of officers in fee, yet an affife lies for an office in tail, or for life; but this is to be understood of offices of profit, for of an office of charge and no profit, an affife does not lie. 8 Co. 47. a. John Wibbs’s case. 2 Adv. 412. S. P.

But a man shall not have an affife of the whole office, unless he be deficled of the whole; but if a man be deficled of parcel of the profits of an office, he may have an affife for that parcel only. 8 Co. 49. b. 2 Adv. 412.

In an affife for an office newly erected and constituted, the demandant in his plaint must shew what fee or profit is granted for the exercize thereof; for this office cannot have a fee or profit or partent to it, an ancient office may, and for an office without fee or profit no affife lies. 8 Co. 49. Webb’s case.

But in an affile for an ancient office, the demandant in his plaint need not shew what fee or profit is belonging to it, for it shall be intended there is fine fee or profit. 8 Co. 49.

In an affife for an office, the demandant must shew a seisin; but it hath been held, that the taking of 3d. for a capia;
4. Of the forfeiture of an office; and where for corruption, bribery, extortion, and opprobrious proceedings, officers ceaseth to be punishable.

It layeth down in general, that if an officer acteth contrary to the nature and duty of his office, or if he refracteth to act at all, that in these cases the office is forfeited. 1 Ed. 4. 1. b. 2 Roll. Ab. 155.

But herein it will be necessary to consider more minutely, what shall be laid such acts as are contrary to the duty of his office, and how for the same, whether they be acts of omission or commission, amount to a forfeiture; wherein it hath been clearly agreed, that a gaoler by suffereth voluntary escapes, by abducing his prisoners, by exerting unreasonable fees from them, or by detaining them in gaol after they have been legally discharged and paid their just fees, forfeith his office; for that in the grant of every office it is implied, that the grantee executeth it faithfully and diligently. 3 C. Lit. 233. 5 C. 50. 3 Ed. 143.

But it is held, that one negligent escape is not a forfeiture, though one voluntary one is, but that two negligent escapes amount to a forfeiture. 39 Hen. 6. 33.

2 Roll. Ab. 155. 2 Term. 173. and fee flat. 8 S. W. 1. 3. cap. 24. The seantor.

These are, says my Lord Coke, three causes of forfeiture or forfeiture of offices by matter in deed. 1t, By abutor. 2dly, Nonuiter. 3dly, Refatual. 4th, Abutor; as by a malchair or other gaoler's permitting escapes, 2dly, By nonuiter; in which there is this difference, when the officer in his behalf, the administraiit or justice or the commonweal, the officer ex officio ought to attend without any demand or request, there by nonuiter or non-

attendace the office is forfeited; but where an officer is not obliged to attend, but upon demand or request made by him whole 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 diversitas, that non-uer of itself, without some special damage, is not forfeiture of private offices, but that it is otherwise of a publick office, and wherein the offender is to be committed to the justice.

3dly, As to refual, he says, that in all case where an officer is bound upon request to exercise his officer, if he does not do it, he forfeith it as if the reward of a manor be required by the lord it is a court, if he does not do it, it is a forfeiture.

6 C. 83. b. The King granted the abbot of St. Albin to have, and to have a good-delivery, and divers peroni were committed to that goal for felony; and because that abbot would not be at the expense of unking delivery but had detained persons in prison a long time, it was resolved, that the abbot had for that cause forfeited his franchise, and that the same might be feized into the King's hands. 2 Loff. 45. 4.

If a fixed fees be brought to repeal the patent of seizer of the custom a part-town for non-attendance and upon evidence it appears, that such a flap was in corruption and others also were charged beyond the fees, not being searched, and that when their fees they were imported or exported, neither the seizer himself, nor any of his deputies were there, tho' it does not appear by negligence or voluntarily, yet this voluntary a fence and neglect, to as himself neither nor servants they were not, is only not cras negligent, but a voluntary, and outcry and forfeiture. 40. C. 49. 7 E. 7 King v. Rasen, adjudged. 3 Med. 145. S. C. cited. So if a gaoler should leave his prison door unlock and the prisoners escape, it is not only a negligent but voluntary escape. 40. C. 49. per cur. 4.

If conditions in law, which are annexed to offices, not to be removed, and others also do not comply with their due fees, they may be removed, but not only cras negligent, as a voluntary and outcry and forfeiture. 40. C. 49. 7 E. 7 King v. Rasen, adjudged. 3 Med. 145. S. C. cited. If a park or forser cut a tree, not for brouwe reparations, this is a forfeiture in law of his office; he cause he breaks the condition in law annexed to his office which is, that he will preserve the game, and not any thing that may impair or destroy them; but out he brouwed, that the cutting down of trees is no forfeiture, if he leaves sufficient for brouwe and thad for the deer, and to cover them. 9 C. 50. a. 40. C. 49. 7 E. 7 King v. Rasen, adjudged. 3 Med. 145. S. C. cited. If a park or forser cut a tree, not for brouwe reparations, this is a forfeiture in law of his office; he cause he breaks the condition in law annexed to his office which is, that he will preserve the game, and not any thing that may impair or destroy them; but out he brouwed, that the cutting down of trees is no forfeiture, if he leaves sufficient for brouwe and thad for the deer, and to cover them. 9 C. 50. a. 40. C. 49. 7 E. 7 King v. Rasen, adjudged. 3 Med. 145. S. C. cited. If a park or forser cut a tree, not for brouwe reparations, this is a forfeiture in law of his office; he cause he breaks the condition in law annexed to his office which is, that he will preserve the game, and not any thing that may impair or destroy them; but out he brouwed, that the cutting down of trees is no forfeiture, if he leaves sufficient for brouwe and thad for the deer, and to cover them. 9 C. 50. a. 40. C. 49. 7 E. 7 King v. Rasen, adjudged. 3 Med. 145. S. C. cited. If a park or forser cut a tree, not for brouwe reparations, this is a forfeiture in law of his office; he cause he breaks the condition in law annexed to his office which is, that he will preserve the game, and not any thing that may impair or destroy them; but out he brouwed, that the cutting down of trees is no forfeiture, if he leaves sufficient for brouwe and thad for the deer, and to cover them. 9 C. 50. a. 40. C. 49. 7 E. 7 King v. Rasen, adjudged. 3 Med. 145. S. C. cited. If a park or forser cut a tree, not for brouwe reparations, this is a forfeiture in law of his office; he cause he breaks the condition in law annexed to his office which is, that he will preserve the game, and not any thing that may impair or destroy them; but out he brouwed, that the cutting down of trees is no forfeiture, if he leaves sufficient for brouwe and thad for the deer, and to cover them. 9 C. 50. a. 40. C. 49. 7 E. 7 King v. Rasen, adjudged. 3 Med. 145. S. C. cited. If a park or forser cut a tree, not for brouwe reparations, this is a forfeiture in law of his office; he cause he breaks the condition in law annexed to his office which is, that he will preserve the game, and not any thing that may impair or destroy them; but out he brouwed, that the cutting down of trees is no forfeiture, if he leaves sufficient for brouwe and thad for the deer, and to cover them. 9 C. 50. a. 40. C. 49. 7 E. 7 King v. Rasen, adjudged. 3 Med. 145. S. C. cited.
OFF

said it by chance, and not willfully; to which the court
did, that the conclusion contra effici futi debuit includes at:
1 Keb. 597. Pickering's case.
If A. hath the custody of a cattle with all profits, &c.
ated to him for life, of which the inheritance hath
en granted to B. and A. refuses B. to let him inhabit
offed or discharged by the same. If A. may, 17.
If tenant in tail of an office commit a forfeiture, this
all bind the issie, by force of the condition tacitly
lawed by law to such effect; but if an officer for
life of such a forfeiture, this shall not affect him who
have an inheritance. 11 Ed. 4. 1. 20 Ed. 4. 56. 39 Hen. 6.
1 Low. 155. 7 Ca. 34. 148. Poph. 119. 
Lev. 71. Heym. 216. 3 Lev. 258. 3 Med. 146.
in. 114. 2 Vern. 189, 269. Bridgem. 27.
The archbishop of Canterbury granted the office of
and keeper of Abingdon-Park to Sir Edward Ne-
which was confirmed by the prior of Christ-Church, Canterbury,
eery or them their sufficient deputy, for whom
mynist his title; Sir Edward was attainted; and the
anifion was, if the King should have the office by the
the same, that being only an offender, and its
&c. and confidence, the name was not forfeiture to the
but that the subterful should hold the name with
e profits incident thereto. Plow. 379. Sir Henry Neville's
But if the King grants an office which concerns true
en as to the fee simple, and one of them is attainted,
officer is forfeited to the King; for he cannot make
Wherever an officer who holds his office by patent
possesses it a forfeiture, he cannot regularly or turned out
without a feite facies, nor can he be laid to be completely
in all parts of his body; and it was relaved, that being only an
bought of record, the fame must be defeated by
of a high nature. But for this see Dyre 155,
Sid. 81. 134. 8 Ca. 44. b. 1 Roll. Abr. 580. 3
Med. 35. 3 Lev. 288.
There can be no doubt but that all officers, whether
ch by the Common Law or made purport to forfeit a
for punishment for corruption and oppressive proceedings,
corrupt to the nature and heinousness of the offence,
therby by indictment, attachment, action at the suit of
ery injured, &c of their offices, &c. 6 Med. 96.
for he is guilty of oppression or oppressive
by the King's Bench, by the plea-
he is now in court, that may do diligence on the
even for himself, and are to see that no abuses are
mitted by them, which may bring diligence on the
courts of record have a discretion power over
several offices, and are to see that no abuses are
officers, jurisdictional, or of such a nature as to
the contrary to the obvious rules of natural justice.
As to extortion by officers, it is so odious, (being
more heinous, as my Lord Coke says, than robbery, as it
usually attended with the aggravating fin of perjury),
so pernicious, as to be dangerous, and is one of those
omission, and also by a removal from the office in the
execution whereof it was committed; and is defined to
be the taking of money by any officer by colour of his
office, either where none at all is due, or not too much
due, or where it is not yet due. Co. Lit. 368.b. 2
438. 448. Raym. 315.
The but the styled and known fees allowed by the courts
of justice to their respective officers, for their trouble
and labour, are not restrained by the Common law, or
by the statute of Wym. 1, and therefore such fees may be
voluntary and infected with the same, with no danger of
extortion. 21 Hen. 7. 11. Co. Lit. 368.
Alfo it seems, that an officer, who takes a reward
which is voluntarily given to him, and which has been
usually in certain cases for the more diligent or expeditious
performance of his duty, cannot be said to be guilty of
Vot. II. N° 103.

OFF

extension; for without such a premium it would be im-
possible in many cases to have the law executed with
368.
But it has been always hold, that a promis to pay an
officer money for doing of a thing which the law
will not suffer him to do, is good in law, though,
freely and voluntarily it may appear to have been made.
If an indictment of extortion charges f. 3. with the
taking of 50£, as bailiff of a hundred colour effici, with
charging for what was not due, or by false pretences, for
perhaps he might claim it generally as being
due to him as bailiff, in which case the taking could not
be otherwise expressed. 1 Sid. 91. The King v. Cover.
As to bribery, it is said in a large sense to be the
receiving or offering of any undue reward by or to any
person whatever, whereas an inquisition or business
relates to the administration of publick justice, in order
to incline him to a thing against the known rules of
truey and integrity, but that in a strict sense it signifies
the taking of any thing valuable by one in a judicial
place, of any one to have before him any way, for
his doing his office, or by colour of his office, but of
the King only; also it signifies the taking or giving a
reward for offices of a publick nature, which manifestly
tending to disencourage men, and to introduce all kinds of
corruption, is highly punishable by the Common law.
Ferrius de Laud. cap. 51. 3 Inst. 145. 149. H. 9.
Cr. Juc. 65.
And these several offences are so odious in the eye of
the law, that they are punishable not only with the
forfeiture of the offender's office of justice, but also with
fine and imprisonment; also it is said, that at Common
law bribery in a judge, in relation to a cause depending
before him, was looked upon as an offence of so heinous
a nature, that it was sometimes punished as high treason
before the statute 25 Ed. 3. 3 Inst. 145. 1 Leo. 291.
Cr. Juc. 65. Rollof Collectan. part i. a. fol. 31.
Also it is said in general, that all willful breaches of
the duty of an office are forfeitures of it, and also punish-
bale by fine, &c. for since every office is instituted, not for
the sake of the officers, but for the good of some other,
nothing can be more just than that he, who either neg-
lects or refuses to answer the end for which his office was
ordained, should give way to others who are both able
and willing to take care of it, and that he should be
punished for his neglect or oppressive execution; but
the particular instances wherein a man may be said to
do contrary to the duty of his office, tho' various, are
yet so generally obvious, that it seems needless to endeavou-
renumerate them. C. Lit. 233. 234.
For more learning on this subject, see 16 Vin. Abr. and
3 Ec. Abr. on Forfeiture of Officers.

Office found, 1s where by the institution is made to the
King's life of any thing, by virtue of his office who inqui-
reth. And therefore we sometimes read of an office found,
which is nothing else, but such a thing found by inqui-
 ration made ex officis. And in this sense it is used 33.
H. 8. 20. and in Stanton, Prærog. fol. 61, where to
trample on an office found, means to do with an office
and impeach it. And in Kitchin, fol. 177, to return an
office, is to return that which is found of virtue of the
office. And there are two sorts of officis in this signification
flowing out of the Exchequer by commissio, viz. an office to
initiate the King to the thing inquired of, and an office of
injunction; for such see 6 Rep. fol. 52. Paye's case.

Inquisition.

Official, (Officialis.) By the ancient Civil law signifies
him that is the minister of or attendant upon a magistrate.
In the Canon law, it is especially taken for him to whom
any bishop doth generally commit the charge of his spi-
ritual jurisdiction; and this office is held in every diocese
called Officialis Principalis, whom the laws and
statutes of this kingdom call Chancellor. 32 H. 8. 15.
The rest, if they be more, are by the Canon law called
Officialis Paravis. Graft. in Clem. 2, Dr. Referiptus, but
with us termed Commifiariis, commiffarii, or sometimes
6 B

Commiffarii:
OP

Ford

Commons and Ecclesiastics. The difference of these two powers you may read in Littledale, tit. De Squisitis Papiffi, cap. 1, verbo Officialis. But this word official in our statutes and Common law signifies him whom the archdeacon substituteth in the exercising of his jurisdiction, as appears by the said statute, in 26 Ch. edit. 1727.

Officiarius non facturis vel unamundis, is a writ directed to the magistrates of a corporation, willing them not to make such an 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. 126.

Dict. Search to be made in London for defective oils, 3 Hen. 8. c. 14. Duties on hempseed, rape oil, and other seed oils, 2 Will. & M. Jfl. 2. c. 4. fo. 9, 41. No lamps to be used in private houses but of fish oil, 8 Hen. cap. 9. fo. 18. See Cantrig's Writs.

Deron labus, Or the laws of Oleron, (Lega Ullarense), are so called, because made when King Richard the First was there, and have respect to maritime affairs. Ca. on Litt. fol. 260. This Oleron is an island in the bay of Aquitaine, at the mouth of the river Charent, now belonging to the French King. See Selden's Mare Clausum, fol. 221, & 254, and Prym's Animadversiones, on 4. Inl. fol. 126.

Olympiades, (Olympia.) The space of five years: Ethelred, King of the English Saxons, reckoned his reign by Olympiades, as appears by a certain charter of his, having thes words, Confection (Inquin) facit Priscus Gratia & p. Regni mai. And this, by contemporary writers, feems to have been the sixteenth year of his reign, and the year of our Lord 994, or thereabouts. Spenman.

Obliques, Are placed among crimes and offences; and omission to hold a court leet, or not forewarning officers therein, are causes of forfeiture. 2 Hen. P. C. 173. Obligations in law proceedings render them vicious and defceive; as want of warrants of attorney entered, &c. 1 Keb. 202, 204. See Montefaucon.


Durandus pone ratio partium, 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 compris to, Reg. Orig. fol. 182.

D. iii. In the Exchequer, as soon as a sheriff enters into his accounts, for illeges, amalgamates and meaner profits, he puts his seal to this mark O. s. which denotes Obtinius, with habbit justificacione annum, and thereupon he forthwith becomes the King's debtor, and a debt is put upon his head, and then the parties Peravoyle become debtors to the sheriff, and discharged against the King. Ca. 4. Inl. fol. 116.

Dinliow, (Arthur, Eqq) An annuity of 2000 l. per annum out of the aggregate fuds, for the natural lives of Arthur Ofiuos, Esq and of his son George Ofiuos, Esq in consideration of the long continued and eminent services of the said Arthur Ofiuos, as Speaker of the house of Commons, 2 Geo. 3. c. 33.

Dinis impuntiandi, The charge of importing, mentioned 12 Car. 5. art. 26.

D. 40 It is the burden of proving, foken of 14 Car. 2. cap. 11. and several other statutes.

Open labv, (Lex manifesta siff apparente) Is making law, which by Magna Charta, cap. 21. Bailiff may not put men unto upon their own bare affections, except they have witnesses to prove the truth thereof. See Labv.

Specificly, A plea of personal malice, sometimes in equity, puipront, que fait hubrech, berner, open theft, ebrecom and latorfick, Leg. Hen. 1. cap. 13. His in evanentalibus Willett, pri. Ran dictur, faith Spelm-

Spelmman. In ancient surveys and accounts of manors, we meet oft with these tenants which were called seruirati; they were those who held the several portions of land, by the duty of performing many bodily labours, and other servile works for their landlord, and were no

other than the first, natives and bond-men. Cowell, 1727.

Sparatio, One day's work performed by any inferior tenant to the lord. Id. ib. Partic. Antq. p. 320.

Appriintus, In a private feine, is the trampling on, or bearing down, one, on possession of law, which is unjust: But where the law is known and clear, though be unequitable, the judges must determine accordingly. Vaughan, 37. In another signification, it is said by Fortescue, that all the unjust methods invented by privity, to extort money from their suffizets, are so many feet, or methods of this nature which power over the people; for succeed, Kings seldom fail to follow the example of their pre-

Opition. When a new suffragain bishop is consecrated, the archbishop of the provinces, by a culomnary prærogative, does claim the collation of the first vacant dignity of the see, in that fac, at his own choice, which is called the archbishop's opinion. Cowell, edit. 1727.

Opis. This was Saxon money or coin, valued at 10 oen as a piece (often found in Domesday) and some times, according to the variation of the standard, two pence. It is a word often mentioned in Domesday, &c. Tale manuerum reddit 30 libras or aedilem 20 in 2a Leg. Canan fifteen aree make a pound, cap. Cowell, edit. 1717.

Paudo 50 Riges & Regno. Before the reforma-
tion, while there was no standing college for a fift parliament, as soon as the houses were met, they proceeded to an act by which he would require the bishops a

clergy to pray for the peace and good government of the realm, and for a continuance of the good understanding between his Majesty and the estates of his kingdom. As accordingly the writ De grando pro Reges & Regno in common in Edward the Third's time. Nicholos's Eq. Lib. lib. part 3. p. 66.

Dagmar, (Privato.) Naturalized, 7 Geo. 2. c. 4.

Dartmum, The hem or border of a garnment, see edit. 1727.

Dvhs. Angels, A honey, a swelling or knot in a staff, caused by a blow. Brass. lib. 3. tit. De Canan cap. 23. 4am. 2.

Dvloris and gardens, Robbing them, or defteing trees in them, how punished, 43 El. 1. c. 22. The hundred answerable for the damages, 9 Geo. 1. c. 22. 7th. 7th.

Dyriel or Dyriel, (mentioned in cit. Rich. 3. 6. 8. 24 Cas. 8. cap. 2. and 3 G. 4. Edw. 6. cap. 2.) See Secularis. Secularis is rather a kind of home like a lurn, which dueers use in their colours. To what dutile, 4 Will. & M. c. 5. fo. 2.

Dyvles or Dyvilles, (Effigies metalli, derived from the Saxon or, metalinum and def or, of effers) Is often used in charters of privileges, being taken for a liberty whereby a man claim the or found in his own ground but properly is the or lying under ground: As also offe of coal, is coal lying in veins under ground before it is digged up. Cowell, edit. 1727.

Dyval, or Dival, (Ordinallum) Is a Saxon word compounded of or, magnum and deal, or delis, jurisdiction or as others, from or, in which language to price riches, and expir courts, in express, or not guilty but is used for a kind of purgation practised in the times, and in the Canon law called purgatio culpatus. There were of this two sorts, one by fire, another by water. Of these see Mr. Lambard, in his Explication of Saxon words, verbo Ordinallum: Of this you may read English, fil. 96, and Hatman especially, Difp. de Feu. 4th. 14. in which, of divers sorts of proofs, which he calleth Fodatulae probationes, he makes this the fourth, calling it Explicationem, & hujus jurisprudentiae 6. genera fulfus animadversiones, vis. per furnam, per aquam, per ferrum candidum, per aquam vel geldam, per formam, per fortes, & per corpus Dominis, of all which very worthily the reading. See Steine de verbis. Significat verbo Ma

chimum. This seems to have been in use in Henry the Second's
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Second's time, as appeareth by Glanville, lll. 14. cap. 1. 2. See also Vermogen, cap. 3. pag. 63. &c. See also Howden 556. This Ordinall law was condemned by Pope Stephen the Second, and afterwards here totally abol­ished by parliament, appeared by Rey. Paten, de Anti­cum 3. lll. 3. numbr. 5. Cowell, edit. 1727.

Druits, Oaths and Onduels. Was part of the privileges and immunities granted in old charters, meaning the right of administaring oaths, and adjudging ordinal trials, within such a precinct or liberty. Cowell, edit. 1727.

These are several forms of oaths, and by divers orders of the Chancery, King's Bench, &c. Orders of the courts of Chancery, either of course or otherwise, are obtained on the petition or motion of one of the parties in a cause, or of some other interested in or affected by it; and they are sometimes made upon hearings, and sometimes by consent of parties. Proct. 3. Sulc. 26. When they are to be pronounced in open court, and drawn up by the regifter from his notes; and if there be any difficulty in adjusting the notes, a summons is given by the regifter, for the clerk or solicitor of the other side to attend, whereupon they are fetted, or the court is applied to, if it cannot be otherwise done: And before the orders are entered and paid by the regifter, the other side hath our days allowed to object against them, for which purpo­se copies are delivered; and when they are perfected, they are to be sworn on, or the clerk or solicitor employed by them. *Not. It an order is of course, the regifter utters the notes within minutes, and gives them to the regifter clerk, to draw up the orders from them; and when the order is drawn up, it is to be entered by an entering clerk, which must be within eight days from the pronouncing it; and then the regifter pulls and gives it, after which it is the service. Or, For not obey­ing an order, personally served, a party may be commit­ted.

Orders of the King's Bench, Are rules made by the court in causes depending, and when they are drawn up and entered by the clerk of the rules, they become orders of the court. 2 Litt. 261. This court doth take notice orders made in Chancery, nor in any other court, fo as to be bound by them, but will proceed according to their own rules and orders. Trin. 23. 2. R. B. And if a cause be put in the paper of ufe, that it may be spoken unto in the matter of law, the order of the court, and the attorney in the cause (not attenant at the day, the cause is to be put out of the cause of ufe, except where excellent good cause be shown. Mich. 32. Car. B. R. 2. Litt. 11. The court of King's Bench hath power to quaff orders made at the publick or private fessions of the ear, or by any other commissioners, if they find good reason for it. Brieís. 1700. The use of peace. See Den.

Dumialce. A book containing the manner of performing giving offices; In quo ordinaturo modus. &c. Durnione of the see, (ordinarius foris) Is a state made touching forf cause, in the thirty-fourth of Edw. I. See Alit.

Dumiance of parliament. The name with of of parliament. Of the taking of parliament are called ordinances parliament 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 perpetual law, and cannot be altered but by King. Common Council. See Par. Roll. 37. E. 3. sam. 38. Byn's Antuknor. 4. luff. 17. Yet the oracle of the King. Sir Edw. Coke, does with many citations affir, at an ordinance of parliament to be distinguished from of, forasmuch as the latter can only be made by the king, and a third of the content of the exists, whereas the former is ordained with one or two of them. Cowell, edit. 1727.

Dumipnecy, (ordinarius) Is a Civil law term, and doth signify any law that hath authority to take cogniz­ance of causes in his own right, as he is a magistrate, if not by deputation; but in the Common law, it is here for him that hath exempt and immediately jurisdic­tion in causes Ecclesiastical, as appears in Co. h. 9. fil. 36. Herfia's cafe. And the nature of Auffinster 2. cap. 19. 31 E. 3. cap. 11. and 21 H. 8. cap. 5. Co. 2. luff. cap. 19. See Brooks, Ordinary, and Inlandces in cap. Exterior, et. de Confinfcributionis, verbo Ordinare. Held solemnly against ordinary, &c. for extoration, mi-not forth the (the. Brieís. 1727. See Admins. Brots, Bishop, Clergy, Habits, etc.

Durnisons contra fercultores. Is a writ that writ a ferman, for leaving his matter against the statute.

Ord. hurg. fil. 180.

Dumition of ritegro. Form of ordination and confec­ration consecrated, 8 E. 1. c. 1. s. 3. 1727. Who qualified to have priests or deacons orders, 13 El. c. 12. sect. 5. Persons in orders to subscribe the articles, 13 El. c. 12. sect. 1.

And to take the oath, 1 W. & M. jiff. 1. c. 8. sect. 7. 1. Ge. c. 1. c. 13. Penalty for procuring, giving or taking orders for reward, 3l. El. c. 6. sect. 10. None but priests are capable of any benefice or dignity, or of administering the sacrament, 13 & 14 Car. 2. c. 4. sect. 14.

Duming, A general chapter, or other solemn con­vocation of the religious of such another particular. Paroch. Antig. p. 576.

Dumiones maioris & minores, The holy orders of priests, deacon and sub-deacon, any of which did qualify for presentation and admission to an ecclesiastical dignity or cure, were called ordinaries; and the inferior or­ders of charter, palmis, other, reader, curate, etc. were called ordinres minor. For which the persons so ordained had one prima toijae different from the tonjura clericalis. Cowell, edit. 1727.

Dumition fugitivo. Those of the religious who de­clare their houses, them of their habit, and so renoun­ced their particular order, in consequence of their oath and other obligations. The favouring and promoting such fugitives was charged on Thomas, Earl of Longue­ville, Ordinum fugitivorum legge trangratia, ne legem plenitutur, pernicie futur. Paroch. Antig. p. 388.

Dumitaris. Letters patent for making it not within the fraud of monopolies, 21 Jac. 1. c. 3. sect. 10.

Duo, So taken for that rule which the monks were obliged to observe. In Eadmer. vita S. Anjumini. cap. 77. Hic et his familia novitatis dict, ut mons imprimis tili gravui solutur.

Duo allo. The white friars. These were of the order of St. Alfonium. The Cijflerniens also wore white. Cowell, edit. 1727.


Dulgito, or Cheugyped. (from the Saxon or. peus and gold, fulus vel redemimo,) Is a delivery or refettion of cattle. But Lambert says 'tis a restitution made by the hundred, or county, of any wrong done by one that was in pledge. Archb. pag. 125, or rather a penalty for taking away of cattle.

Dufp have, Penalty on felling any with a ball­boat within the mouth of Oxford haven, 27 El. c. 21.

Dusafrs (dorijium, et c. avii acquisit aures filis), Friedel 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 Tenter, where the King commands the Tenders to deliver such jewels, garments and ornamentals, as they had of his in keeping, among which he names dalmaticum vel adornium de orsatis, i.e. a dalmatic or garment, guarded with orsafris. And of old the Jacques or coat- armours of the King's guard, were also termed orsafris, because adored with such goldsmith's work. Cowell, edit. 1727.

Dignitious, But more truly orgaunalis, that is, proud and high-minded, derived from the French aoueul, pride.

Digners, (mentioned in flat. 32 E. 2. fl. 3. c. 3.) Is the greatest sort of North-sea fish, (for the fame they are greater than lob-fish) which we now call organ, corruptly
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Dodo, Was a deacon-cardinal of St. Nicholas, in card. Tullian, a legate for the pope here in England, 23 H. 3, whose continuations we have at this day. Siue's Annals, p. 248.

Decopenius, Was a deacon-cardinal of St. Adrian, and the pope's legate here in England, 15 H. 3, as appeared by the award made betwixt the said King and his commons at Knaresbore. His continuations we have at this day.

Dutch, ( 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 boso or button of gold, set with some rich stone.

Dott. Words which begin or end with eu, and are names of places, signify a situation near the bank of some river, as Eton, etc. The 1st Stat. 15 H. 8, c. 25, St. Mary Over in Southwark, Brawnury in Worcestershire.

Duerett, Is a Saxon word, and signifies a person convicted of a crime; from the Sax. sifer, saper, and cythian, offender. 'Tis mentioned in the laws of Edw. apud Brennus, p. 336.

Dueretella, A contumacy or contempt of the court, sometimes it signifies a forfeit for such contempt. In the laws of Aelfan, c. 25, it signifies contumacy, viz. si quis geminum aditus superavit, ter enaudit overhornriffinum. In a council held at Winchelsea, anno 1027, it signifies a forfeit for such a contempt. Cowell, edit. 1727.

Duties, Are sometimes required to have been paid in a 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 Stat. fol. 116.

Dutereieces of the pop. See Pop.

Dverccant, (Fodum apertum,) An open deed, 3. Stat. fol. 12, which must be minutely proved. See Tracton.


Dulop, The lirouve or fine paid to the lord by the inferior tenant, when his daughter was corrupted or debarced. — Nativi in villa de Widithorp—fobeo qui libidem viros et feminae caelesti, & urberius profecerit. & qubis filibus, &c. &c. &c. Brompton, Hist. de Circul. Hist. Crokyland, p. 115.

Dulit, Derived from the Old French duf, to re, move, as ssufid of the possession, that is, removed, out put of possession. Misc. 9. Car. 1. 3. Rep. fol. 234. Pole's case.

Dulit le maine, (Amore manniss.) Signifies to take off, and may be true in French it should be ssufid le main, in a legal sense it denotes a judgment given for him that trasveled or fired a manfrans le droit, and is in deed a delivery of lands out of the King's hands; so when it appear upon the matter disfellowed, that the King hath no right or title to the thing seisid, then judgment is given to be procured by the Chancellor, That the King hands be amoved, and thereupon an uncerum manniss shall be awarded to the echactor, which is as much as if the judgment were given, that he shall have again his land. Secund, Prerog. cap. 24. See 25 E. 1. stat. 3. cap. 19.

It was also taken for the writ granted upon this petition F. N. fol. 126. It is written under the main, 25 H. 8. 22.

But now all wardships, liverties, primer felons, an ssufid le main, &c. are taken away and discharged by 12 Car. 2. cap. 24.

Dulit le meur, (Ultra maris,) Is a cause of ssufid effect, if a man appear not in court, upon summons, for the same was taken by the fees. See Coilin.

Dulstafgeth, Is the same as defined by Britton, lib. 3. trad. 2. cap. 34. Ufultafgeth dicitur latro extraordinus uigilant, de terra aliqua, et qui captus fuit in terra injusto qui talit habeatur libera. But Britton hath it otherwise, fol. 91. It is a compound of three Saxon words, viz. out, extra, fang, capio vel captus, and thof, for. It is used in the award of twenty or thirty or of large lands, whereby a lord is enabled to call any man dwelling within his own fees, and taken for felony in any other place, and to judge him in his own court. Ralph's Expulsion of Words, an 122 P. 2. & Mar. cap. 15.

Dultand, The Saxon Tham divided their becland, a hereditary estate into inland, such as lay nearest to the

Corruptly from Orthley-ling, because the bulk are near that island. Cowell, edit. 1727.

Ligilde, Without rec Gonse. The meaning is, with difficulty to be made for the death of a man killed; that is, he was lawfully slain. Si hic inverti tiet, iacet orgilde. Cowell, edit. 1727.

Sift college. A precend of Rychijfer, how annexed to its provotithy, 12 Ann. f. 2. c. 6, fol. 7.

Original. In the court of King's Bench, the usual original of all actions, is a receipt of trefpass upon the case; and this court doth not issue original in all actions of debt, covenant or account, &c. whereas the court of Common Pleas, proceeds by original in all actions of kind: But to arrest and fave a party to outlawry, it is made use of by both courts. And for originals in trespass, there is a fine payable to the crown, where the damage are laid above forty pounds in proportion to the damage. Practif. Syst. 254. 255.

The original is the foundation of the capias, and all subsequent process; the return whereof is generally the yste of the capias: Though the capias may be taken out before the original, by leaving the praetul with the flazer, who will make out a capias upon it, and afterwards carry it to the curthier to make an original; and the flazer when it is returned, is to file it with the coftes brevium. See Attorney's Pract. in Court of K. B. and C. F.

Legallin, In the Treasurer's remembrance-office in the Exchequer, are records or transcripts left thither from the Chancery, and are distinguished from Records, which contains the judgments and pleadings in suits tried before the barons of that court. Id. ib.

Lymond, (Duke of) Attainted, 1 Gen. f. 2. c. 17.

Upham, (Orphans,) Is a fatherless child; and in the city of London there is a court of record establibhed for the care and government of orphans. 4 Stat. 2. 248.

Funds appointed for the relief of the orphans of London, 5 W. & M. c. 10. 21 Gen. 2. c. 29.

Duty on wines imported to London, 5 W. & M. c. 10. fol. 8.

Duty on coals continued, 21 Gen. 2. c. 29.

Defendant intituted to coals, 21 Gen. 2. c. 29, fol. 6.

See Custom of London.

D'velle, A foref word, signifying the claws of a dog's foot. Cowell, edit. 1727.


Dynt, (Orismum,) Is a room or cloister of a monastery, prior to the division of the same, which was ordained that Orvis Orval college in Oxford took name. Cowell, edit. 1727.

Strictum pactis. It was a custom formerly in the church, that in celebration of the mass, after the priest had consecrated the wafer, and spoke the words, viz. Per Dominum vobisam, that the people killed each other; and this was given an end afterwards, when this custom was abrogated, another was introduced, viz. That whilst the priest spake these words, a deacon or sub-deacon offered the people an image to kiss, which was commonly called Pacem. We read it in Mut. Patrif. anns 1100. Regem auuenti ad oitrem et terram reductum ad pacem. Cowell, edit. 1727.

Dimonds, or Diamunus, (Mentioned in flat. 32. H. s. cap. 14.) Is a kind of ore, or iron-stone, assening the nature of iron, and it seems was anciently brought into England. Cowell, edit. 1727.

Difilio, Was a thabte paid by merchants for leave to flew or expose their goods to sale in markets. Qui per terras habent othomnom degebant & teligen. Leg. Ethelred. cap. 23.

Dawall's law, By which was meant the cieging married priests, and introducing monks into churches, by Oftald bishop of Worcester, in the year 964. Cowell, edit. 1727.

Dawall's law hanged, Is an ancient hundred in Worcedefrore, so called of Oftald, bishop of Worcefter, who obtained it of King Edgar, to be given to St. Mary's church there. It comprehends 30 hides of land, and is exempt from the jurisdiction of the sheriff. Cam. Brit. tit. Worcefter. See the charter in Spilm. Cowell, 1 tom. fol. 452.
To what place process of outlawry is to; and of the

1. In what cases process of outlawry lies; and by what jurisdiction such process are to issue.

It seems, that originally process of outlawry only lay in treason and felony, and was afterwards extended to trepas of an enormous nature; and herein it is laid down by ferjeant Hawkins, That process of outlawry at this day lies in all appeals, and in all indictments of conspiracy and deceit, or other crimes of a higher nature than trespass; so that but it lies not in an action, nor in some fix, on an indictment on a statute, unless it be given by such statute, either expressly, as in the case of premunire, or impliedly, as in cases made treason or felony by statute, or where a recovery is given by an action in which such process lay before, as in the case of forfeiture.

So process of outlawry lies in replevin, and is given by the statute 25 Ed. 3. cap. 17, which gives the capias in this manner; when on the pribus repugnati factas the sheriff returns ad eum clausum, then a capias in writ. But thereon being ultimately to issue, and on that being returned nulla bona, a capias issues, and fo to outlawry; but it does not lie on the original writ of replevin, which is sicutis and determined; and therefore as no addition is required in such original writ, fo 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.

But in account, debt, detinue, annuity, covenant, and such actions as are grounded upon negligence or laches merely, no capias lay at Common law, but only fumsmons and diligens infinite, and therefore the capias and outlawry in these actions were introduced by diversers of parliament.

By the statute of Morthbridge, cap. 23, the writ of nonparvi est de computo was given, where before the process in account was fummons, attachment and diligens infinite; and by Wofm, cap. 11, process of outlawry is given in account. 2 Ed. 4. 57. 2 Boll. 63.

And by the 19 Hen. 7. cap. 9, recting, "That for afo much as before this time, there hath been great delays in actions of the cave that have been sued as well before the King in his Bench, as in the court of his Common Bench, by reason of which delays many persons have been put from their remedy; it is therefore ordained, enstaled and established, that like process be had hereafter in actions upon a real, and call for security, as is to be sued in any of the said courts, an act of Parliament, or debt.

But it hath been adjudged, that process of outlawry lies in no case but where a capias lies; and that therefore
where the proceeding is by bill, and not by original, as there can be no capias, so there can be no process of outlawry, as in a bill of privilege by or against an attorney.

1 Rec. 359. 2 Rol. Ab. 76. 3 Ed. 159. 4 Rol. 577.

It is clear, that the courts of Hale's Pliographer may give process of outlawry, and that the court of King's Bench, either upon an indictment originally taken true, or removed thither by certiorari, may issue process of capias and ejectment into any county of England, upon a suit (either criminal or civil) brought in the court of Queen's Bench, and by the statute of 5 Ed. 3, cip. 11, they may issue process of capias and ejectment to all the counties of England, against persons indicted or outlawed of felony before them. 2 Hale's His. P. C. 198.

All justices of oyer and terminer may issue a capias or ejectment, and so proceed to the outlawry of any person indicted before them, directed to the sheriff of the same county, to arrest the person, to be held to appear in the common law courts; and by the statute of 5 Ed. 3, cip. 11, they may issue process of capias and ejectment to all the counties of England, against persons indicted or outlawed of felony before them. 2 Hale's His. P. C. 219.

All justices of the peace may make out process of outlawry upon indictment taken true before themselves, or upon indictments taken before the sheriff, and returned to the justices of the peace, that is, the sheriffs, that is, the power of the sheriff, to make any process upon indictments taken before him, is taken away by that statute. 2 Hale's His. P. C. 197.

It is made a quo warranto by Hale, whether a coroner can by law make out process of outlawry against a man indicted by information before him. 2 Hale's His. P. C. 199.

It hath been held, that though the process in inferior courts be a capias, yet they cannot proceed to outlaw the party. Tull. 158. Cor. Juc. 223, 224, Reg. 128. 1 Sid. 248, 250. 1 Rol. 890, 908.

The process to the outlawry, vis. the capias and ejectment, 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 style of the chief justice or chief judge of that court or session. 2 Hale's His. P. C. 199.

2. Against whom process of outlawry may be awarded; and whether it may be awarded against a peer, an infant, a man's wife, or other persons, 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 he shall be outlawed for judicium ex iure. 21 Inst. 49. 3 Ed. 31. Staur. 130. 2 Hawk. P. C. 424.

But civil actions between party and party, regularly a capias or ejectment I am not against a lord of parliament of England, whether secular or ecclesiastical; yet in a case of an indictment for treason or felony, yet or but for trespas of & arms, as an affault or riot, process of outlawry shall issue against a peer of the realm, if the suit is for the King, and the offence is a contempt against him; and therefore, if a refuge be returned against a peer, or if a peer be convicted of a misdemeanour with force, or denies his deed, and it be found against him, a capias pro fine and ejectment shall issue, for the King is to have a fine; and the same reason holds upon an indictment of trespas or riot, and much more in the case of felony. 2 Hale's His. P. C. 199, 200. Cor. Eliz. 170, 503. 4 Co. 54. 1 Rol. Ab. 220.

An infant above the age of fourteen may be outlawed, and the outlawry is not erroneous; but an infant under the age of fifteen, cannot be outlawed, for if he be it is erroneous. 3 Hale 5. 7. 7. Fitz. 11. Outlawry 11. 2 Rol. Ab. 825. Dyar 102. 2 Hale's His. P. C. 207, 208.

But the outlawry of such infant is not cold, it being of record, but is voidable only by writ of error. Dyre 239. 6. 2 Rol. Ab. 825.

A woman is said to be waivered, and not outlawed; and King & Lord Coke, why the outlawry of a woman is legally called treason felonius, is because women are not found in heirs or tenants, as men are who are above the age of twelve; and therefore, says he, men are called trespas, & c. extra legem poti, but women are whencesoever, i.e., diletter. left out, or not recited, because they are not found in the law. Co. Lit. 122, 6. Ed. fol. 180.

Therefore where a capias and ejectment were awarded against three men and two women, and the return was nullity existens, where, as to the women, it ought to have been nonnullity existens, this was held to be error. Co. Rand. 407. 1 Rol. Ab. 8 S. 4. S. P.

If in an action against husband and wife, the husband is outlawed, and wife waived, and the issue upon the capias nullity, though fine is to be discharged of the imprisonment, because the plaintiff cannot proceed against her alone, yet the fine remains waived, and when her husband is taken he must bring her in. For this see Dyre 771, b. Cor. Juc. 445. Cor. Eliz. 320. Hutt. 86. 4 Sid. 21.

In an action for a debt due by the wife before marriage, if the husband was returned outlawed, and the wife waivered, but before the issue was awarded, the attorney procured for the wife a supersedeas, forbidding that 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 ejectment the husband had returned nullity existens, or upon plurality capias, the husband be a man, he may appear in his own behalf, when the appearance of the wife should be entred, but not by attorney, as it is here, and the ejectment should only issue against the husband, & idem lides should be given to the wife; but when the husband upon the ejectment was returned nullified, then it shall be entered after fum prae war, for the wife, for the processes in the ejectment be rendered null, and he shall purchase his pardon, he shall not have any allowance therefore in a forfeiture, unless he appear for himself and his wife; but if the husband, the sheriff should return capi corpus upon a plura capias, and non intente for the wife, yet an ejectment shall issue against both, because it must be presumed that he is in his own behalf; and if upon the ejectment the sheriff returned nullified for both husband and wife, and the wife was waived, the husband shall go free; but in this case, because the ejectment was returned against both to be outlawed, the supersedeas supposing that the wife is outlawed, and the husband is not dissolved the ejectment should be filed against both. Cor. Car. 58, 59. Smith ver. 487. 4 Hutt. 86, S. C.

If two are fused in a joint action, and neither of them will appear, processes of outlawry must be taken out against both. Cor. Eliz. 6. 6. Bever's ver. Beverly.

If an ejectment be awarded against two, and the return is prima facie estuis & non conversus, nor there is anything, nec corpus aliquis comparatis, it is erroneous. A Rol. Ab. 802. Taverner's case.

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. Ab. 127, S. C. 1 Bever.; 25, S. P. Leon.

When two are adjudged to account, and one is outlawed and accounted, if he discharges himself upon the account, this shall be a discharge to the other, when he uses a false facies upon a charter of pardon; and if he be not outlawed in the suit, this shall be a charge upon the other; because they were adjudged a joint account jointly. 41 Ed. 3, 13, 4. 1 Rol. Ab. 127, and side Ador 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 the wife, as sometime of the sons and heirs of the obligor in gavelkind, process is continued till the action
are outlawed, and the niece waited, and after the uncle
left, and bring a fine juss against the princi-
ple, who therewith declares against them final and con-
clusive; and the uncle pleased, his niece is but of the
age of seven, was not entitled to plead, and must be
heard, unless he asks a defendant, because
C. be a defendant, he may have been indicted as
accusatory to one, because the felonies are in law several;
but if he be indicted as accessory to both, he
must be
proved for. 2 Hals's Hiff. P. C. 262, 267.

In treason all are principals; and therefore processe of
outlawry may go against him that receives, at the same
time as against him that did the fact. 1 Hals's Hiff. P. C. 235.

3. To subjet loose processe of outlawry is to judge, and of the quinto excusus, and proclamation on an outlawry.

The exigent must be found in the county where the
party really resided; for there all actions were originally
hated, and because that outlawry were at it only by
thereof, felony or very enormous treafures, the processe
was to be executed at the Town, which is the fieff's
criminal court; and this he held not only before the
thief, but before the coroners, who were ancient confusors
of the peace, and so in other places. it is by
side with the thief, and whispered the
outlawry in the county on the party's being
quinto excusus; and therefore anciently there was no oc-
casion for any processe to any other county than that in
which the party actually resided; but this matter being
since altered, we are now to take care of the
principals or accessory, will be necessary to see
the statutes themselves. Fitz. Ewen. 26. Dyer
205.

And first, It is enacted by the 6 Hen. 6. cap. 1.
That before any exigent be awarded against persons
indicted in any cause of treason or felony, writs
of capias shall be directed as well to the thief or thieves of the county whereof they are named in the indictment; the fame capias having the space of fix weeks at the least, or longer time, by the discretion 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 man-
ner as they had done before the statute; and if any exigent
be awarded, or any outlawry pronounced against
such persons, before the return of the said writs, the
name exigent so awarded, with the outlawry thereon
pronounced, shall be directed and held null and void.

And it is further enacted by S. 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 treafure,
before the justices of the peace, or before any
other officer, having power to take such indictment or appeal
or other commissioners or justices in any county, flich
or liberty of England, before any exigent 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 fepa-
rated to be convinent, by the fame indictment, returnable
before the fame 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 held from month to month, and where the counties
be held from six weeks to fix weeks, the space
of four months. The latter be 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 bail-
wick; and if he cannot be found within his bailwick, to
make proclamation in two counties before the return of the
same 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 to fer-
vned and returned, if he be which is so indicted or appealed,
come not at the day of such writ returned, the exigent
shall be awarded; and that every exigent and outlawry
otherwise awarded or pronounced shall be held for
none and void.
in the margin, so that the sheriff should be intended to refer thereon; but because an indictment shall not be taken by itself, 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; there was that error to be ill, and the court wrote, in the second cause also, it was held to be erroneous; but Fungfield said, that ought to be assigned for error in fact, for it might be leap year, and then it is good, and that matter inablable. 

Cros. fae. 167. Liverl. cael.

8. No exigis faciais be delivered to the sheriff, and there are but two county courts before the return, and the sheriff return the first and second exaltus, & non comparuit, 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 exigis faciais with an allegatas comitiatus, if it be prayed after the return, and before any new county-day be paid; but if any county-day be paid between the last of the former county-days and the return, no exigis faciais shall issue with an allegatas comitiatus but an exigis faciais de novo; for the demand of the party must be at five county-courts successively held one after another, before it is made on any county-court; if the second exaltus the offender render himself, and fine himself, and at the day of the return make default, no exigis faciais with an allegatas comitiatus shall issue, because three county-days intervened, but a new exigis and capias against the bail. 2 Hal. Hist. P. C. 201-2.

9. The court cannot take notice of the time of holding it as they may of the times of holding the county-courts but it is now agreed, that if an exigis in ludum and they beginalgina platica terrae (as the court they make shall proceed along at that Hallings to the outlaw without missing their Hallings de commissariatu plastic but if an allegatas Hallings comes, they shall proceed without omitting any Halling. Palm. 287. 2 Lem. 14. 2 Hal. Hist. P. C. 202.

4. What the party must do in order to initiate him to reverse; and the effects and consequences of a reversal.

Regurally in all outlawries, as well personal as criminal, the party in order to reverse the fame was to appear in person, and could not appear by attorney. Lem. 22.

But now by the 4 & 5 W. & M. cap. 18. For it more easy and speedy revering of outlawries in the case of King's Bench, it is enacted, "That from and after the first day of Eastre term thence ensuing, no person or persons whatsoever, who are or shall be outlawed in the said court for any cause, matter or thing whatsoever (treson 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 for court."

And it is further enacted by the said statute, "That if any person or persons outlawed, or hereafter to be so outlawed, in the said court, (other than for treason or felony) shall from and after the said first day of Eastre term be taken and arrested upon any capias statutorum or any 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 tenant's engagement under his hand to appear for the said ear of those defendants, and it is a matter in all such outlawries, and thereupon to discharge the said defendant and defendants from such arrests 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 said defendant or defendants by bond, with one or more sufficient fiarey or fiareties, in the penalty of double the sum.
for which special bail is required, and no more, for his, her or their appearance by attorney in the said court at the time appointed, and for the return of the said writ at such time as shall be required by the said court; and after such bond taken to discharge the said defendant and defendants from the said arrest.

And it is further enacted by the said statute, "That if any person or persons outlawed as aforesaid, and taken, and holden to answer, shall appoint an attorney to appear for him or them by his or their appearance, or shall suffer a writ of retrenchment to issue out of the said court, and shall not appear by such attorney to answer the said writ of retrenchment, then and in that case the court shall proceed to consider and determine what is the necessity of the case of felony, when it is suggested on the part of the party, there being no lands, and the attorney general contest[s] it."

It is agreed, that after an outlawry of treason or felony is reverted, the party shall be put to the plead to the indiction, and may, for the appearance and formalities of the King's Bench by certiorari, with a command to the justices below to proceed by the statute of 6 Hen. 6, cap. 6, to return the return of the said writ; or the record may be remitted into the country, if it were removed into the King's Bench by certiorari, with a command to the justices below to proceed by the statute, 4 & 5 W. 4. 34. & 2. Edw. 11, 2. Heli. H. P. C. 37, 12. Edw. 11, 2. Heli. H. P. C. 39. 

So if a man be outlawed by process in an information, and comes in and reverses the outlawry, he must plead infoniter to the information. 1 Salk. 231. Rex v. Hill. 5 Mot. 141. S. P.

The law is the same in civil cases; and therefore if an outlawry in a personal action be reverted, the original remains. March 9.

Trefpas for taking and detaining his beasts till he made a fine: the action was laid in Saffres; the defendant pleads, that the cause of action did accrue within five years before the suit was brought; and therefore it was not exercising in London, intending when the defendant had appeared to have declared for this treaspe; and that the defendant was outlawed in London, and that within such a time after the reversal of the outlawry he declared here; the defendant demurred; and for the defendant it was infinum non esse, that he was not outlawed in London. But the court doth reverse in this action declar in another county, that the cause of action be transitory; but upon information by the proper notaries that the course of the court is, that although the original be laid in London for expelling the outlawry, yet when the defendant comes in, the plaintiff may declare against him, or he may be outlawed in London or other county; and the statute 21 Jac. 1. cap. 16. gives to the plaintiff generally power to commence a new suit within the year after the outlawry reverted; and that he may do in this case to warrant his declaration within the court of the court; and judgment was given for the plaintiff. 3 Leve. 245. Whitaker v. H.usdown.

It hath been adjudged, that if the King grant over the lands of a person outlawed for treason or felony, and afterwards the party be outlawed, the party may enter upon the patent, and need neither to sue a petition to the King nor a fieres faciis against the patentee. 1 Edw. 180.

A person shall, after outlawry reverted, be referred to his law, and to be of ability to sue. Co. Litt. 288. b.

If the goods of a person outlawed are sold by the sheriff upon a capias ulugatum, and after the outlawry is reverted by writ of error, he shall be referred to the goods themselves; because the sheriff was not compellable to sell these goods, but only to keep them to the use of the King. 5 Co. 90. Holt's case. 1 Reel. Ab. 778. S. C. cited.

If an adowson come to the King by forfeiture upon an outlawry, and, the prebend being void, the King presents, and then the outlawry is revered; yet the King shall enjoy that prebendment, because the prebendment then comes in to him in any other county, be the action local or transitory; and the statute 21 Jac. 1. cap. 16. gives to the plaintiff generally power to commence a new suit within the year after the outlawry reverted; and that he may do in this case to warrant his declaration within the course of the court; and judgment was given for the plaintiff. 3 Leve. 245. Whitaker v. Hudson.

But if the church be void at the time of the outlawry, and the prebendary is thereby forfeited as a chattel principally and distinct from itself, there, upon the reversal of the outlawry, the party shall be referred to the prebendation. 1 Eriz. 570. agreed per curiam.

If a termor being outlawed for felony grants over his term, and after the outlawry is revered, the grantee may have treaspe for the profits taken between the reversal of the outlawry and the assignment; for by the reversal it is as if no outlawry had been, and there is no record of it. Curz. Eriz. 170, agreed per curiam. 22.

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 outlawry is revered, there can be no reflation; the reason whereof is, that for the court

Vol. II. No. 110.
of King's Bench cannot fend a writ to the Treasurers; and the court of Exchequer have no record before them to file out a warrant for restitution. 3 Mod. 61.

It is in Chancery, that if A. being oppressed of several houses for a long term of 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 real mortgagee, A. may have the mortgage upon a reversal of the outlawry; and herein the Lord Keeper saith, that the judgment upon the reversal is, that the party shall be restored to all that has not been answered to the King; which in all cases has been under-foot of the meane profits answered to the King, and not as it was, that the mortgagee was feised 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. Pegson vs. Ayff; and vide 2 Lev. 49, the case of Pinfoeld vs. Northby.

For more learning on this subject, see 3 Bac. Abr. tit. Outlawry, and 27 Vin. Abr. tit. Outlawry.

Outparties. (mentioned in flat. 9 H. 5. fl. 1. c. 7.)

A kind of thieves in Kiddsfdale, that flote cattle, or other things without that liberty: Some are of opinion, that those which in the for-mentioned statute are termed outparties, are such outparties, being such as set matches for the robbing any man or house. Caswell, edit. 1727. See Intakers.

Outtakers. Are billallent, 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 their county or hundreds courts. 14 E. 3. fl. 1. cap. 9.

Dweltys. Is when there is lord, meyne and tenant, and the tenant holds of the meyne by the same service, that the meyne holds over of the lord above him; this is called gowy of services. Caswell, edit. 1777.

Sitting. See Titums, Cetalo.

Droit. See Cattle.

Droit. A franchise granted to the university of Oxford, excepted out of the general confirmation, 9 Hen. 4. c. 1. 13 Hen. 4. c. 1. Scholars outlawed for riots, to be banished the university, 9 Hen. 5. c. 8. See Ulto/Cives.

Owyng of land. Bosatta terre. Six oxgangs of land, is so much as fix oxen can plough. Crisp. Jurid. fol. 220. But an oxgang feemeth properly to be spoken of such land as lieth in Heynor. Old Not. Brev. fol. 117. Scoene de orb. finis. verbos Bosatta terre, faith, That an oxgang of land should always contain tispe as much land, as two men over two oxen that they can plough in one year, Schmiley says, Bosatta terre is quantum suflicit ad iter actu priorius converi. Os enim est et gang vel gate iter. See Co. on Littl. fol. 69. Caswell, edit. 1727.

Port. Seems to have been recently used for what is now called affinis. Ann. 13 Ed. 1.

Oyer of a deed, is when a man brings an affion 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 now calls obligation, is not only for the defendant's attorney to declare 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 consider by it what to plead to the action held. Upon every other demand of oyer were in court, as it is now in cases of appeals; but now it is demanded and granted between the attornies, 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 not take oyer of it without leave of court, or of the attorney; and the form of pleading it was must be upon demand; an oyer of writ is in order to object to it. Per Pescot J. Mod. 28. Mod. 2 Ann. B. R. Longvill. v. Hundred of Thiffield.

In debt upon a bond, the defendant demanded oyer of the condition, which was to perform covenants in an in- denture, and then demanded oyer of the indenture; and the plaintiff gave it to him, omitting an indorsement, which was made before the execution of the deed; upon this over the defendant pleaded performance; and the plaintiff replied, and fet forth the indorsement, and prayed judgment for the variance; and for ear, the plaintiff was not obliged to give oyer of the indenture; and the defendant, did, yet being what he need not do, the setting it forth in this case being, to put it forth; nor is he concluded to say, that there is no more 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 this judgment was given for the plaintiff. 2 Salt. 498, 499. Mod. 3 Ann. B. R. Ceka. 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 good, and the recognizance acknowledged in this court, then the defendant may demand oyer of the recognizance. Pop. 202. Mich. 2 Car. B. R. Chamber's cafe.


In covenant the defendant demanded no oyer, but pleaded good in articulis illi uterum contenit, &c. To court held this to be ill, and his flying the counterpart for it, if he pleads, he avows his name to be in court; and the plaintiff had judgment there. Exch. 153. p. 88. Pocf. 15 Car. 2. B. R. Pastford v. Cooper.

Debt on bond conditioned to perform covenants, if the defendant pleads performance without demand of oyer, it is a good cause of demurrer. Fint. 37. Trin. 21 Car. 2. B. R. Taylor v. Woolridge.

One cannot take advantage of an original, theo 's new fo vicious in recital, without craving oyer of it; pe Hols. 12 Mod. 55. Pocf. 5 W. & M. Ann.'

Cafe on several promises on original; defendant, with out craving oyer of the writ, pleaded a variance between the writ and the court, having particularly wherein heupon plaintiff demurred; for though the writ was in court, yet is on a distant roll from the count; and in advantage can be taken of it, without craving oyer good ear, concetiff, and a respond. onder awarded. 12 Mod. 189. Pocf. 10 W. 3. Bray v. Digby.

Apprentices for not teaching his four several trades in an indenture of apprenticeship men- tioned. Defendant, instead of craving oyer of the plain- tiff's indenture facts fits an indenture of his own, and pleads a performance of the covenants therein. Upon demurrer, the plaintiff had judgment; for the defendant alleged the other indenture, but crave oyer of the indenture declared on. 6 Mod. 153, 155: Pocf. 3 Ann. B. R. Fawc v. Mably.

Declarations, plea, qualifications and other pleadings.
Pallium, and Geo. petition. Which this facd, romp ear y adm oned (foned) of in ders about elony, andida and quarter teen three pacification, back jackets. oper pages commifions, for him they alfo of feveral 12. Mat. 17.) as pleased next chapter, to refufe elfewhere, Is (corrupted DCCO^D, as known terminer, as pay. terminer) at law, for our each one arm pay. (Pceva on England, betwixt pay. carnem, for fome 45. Laws, for our statutes for in fome of pret fons, our for our terminer, he at day, who shall all small fiall shall all small for this marriage, which was in the nature of adoption, and fignified a legitimation. This is mentioned in an epifle of Robert Grosfean, the famous bishof of Lincoln, who tells us, that it was an old report, that by fuch cullom the children were taken to be legitimate; and that In fignam legitimationis nati ante matrimonium confentuentur posu fali pali super parentes erum extens in matrimonii felematizatione: Which epiftle is mentioned by Mr. Suden, in his notes upon Fleta, who likewise tells us, that in the reign of R. 2. the children of John of Cowte, Duke of Lancaster, which he had be fore his marriage by Catherin Swinford, 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,
Palinnion, 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 wool, and that a piece of it every year during the fast-day of their saint, offer two white lambs on the altar of their church, whilst they sing Ag- men Do 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 fab-descons, who put them to pasture till the shortening time, then they are shown, and the tiss is made with their wool mixed with other white wood. '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 points, the left and right, before and behind; and 'tis fastened with three pins made of gold, whole beads are spilfies. 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 fab-descons, who lay it up very safe. And because it was taken from the body of St. Peter, it signifies the plentitude of ecclesiastical power, and therefore was the prerogative of popes, who pretend to be the immediate executors of that saint, to invest other prelates with it, which at first was done nowhere but at Rome: But afterwards, by procuration, in other places in this form, viz. Infletor, Infletus et infletirius, in consistoriis a fomma pontificis speciificum. Cowell, ed. 1727.

Palla, (Pallia, mentioned in flat. 25 H. 8. 20.) Are veitures 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 lends to arch-bishops and metropolitans, who wear them about their necks at the altar, above their ornaments. The pall was first given to the bishop of Offiza, by pope Marcus the Second, anno 336. And the preface to an ancient fynod held at Trier, anno 379, by the Synod of Centerbur, prefixed, begins thus, — Ego Odo hamilius et extremus, divina laetitia clementia, alini praeftulis & pulli honore diletatus, &c. Selden's History of Tithes, pag. 17. See more of this in Spelman's Chyfary, verbo Palinnion. See Grusby's Church History, fol. 672. And the book called Blowy in the Prayer Office; and Sir Roger Twifden's Hift. Indication, fol. 47.

Palnutry, ( Mentioned in flat. 1 P. & M. cap. 4.) A kind of divination, practifed by looking upon the lines and marks of the fingers and hands. This was practifed by the Egyptians, mentioned in the faid fables, and there mixed with Pallntry.

Pamphlets, See Stamps.

Pambracttis, An ale-wife that both brews and sells ale or beer. Cowell, ed. 1727.

Pan, Panella, vel Panciwm; so written both by Fortesque in his book de Laudibus Legam Arg. cap. 25, and Co. en Litt. pag. 158, who says it denomins a little part. But the learned Spelman, in his Chyfary says, Hic eft minus optimus: it prolymagnifiying fchedula, vul pagina, or rather pegalia, a fchedule or page. Hence comes the law-term impammeliores, to impair; and to imamplia a jury, that is, to write in a schedule or roliste the names of fuch jurors as the ferviff returns, to pafs upon any trial. Kog. Orig. fol. 353. So we fay, a panel of parliment, and the fchedule of goo. See Allith, 310, 197.

Paunts armigeromum, The bread distributed to fervants. Mon. 1. pag. 420.

Paunts bife, Corrie bread. H. lb.

Pauntta, A pantry, or place to let up cold violutas. Cowell, ed. 1727.

Paunts, called Blackbeighb. Bread of a middle fort, between white and brown, fuch as in Kent is call'd Ravel-bread. In religious houses it was their coaffer bread, made for ordinary goells, and diluted from their lafnost loaf, or paunts conventiues, which was pure manche, or white-bread. Cowell, ed. 1727.

Paunts, a kind of biffen, bread of a middle, campbrife, coarse and black. Cowell, ed. 1727. The priest and convent of Ely grant to John Grove, a credely or allowance,—ad juum volvit quilibet die omnem panem mactabale, i.e. a white lof; and to his fervant omnem panem militarem, i.e. a little brown lof or biffet. Cowell, ed. 1727. 380, f. 47.

Pauntz foris & tunns. When a felon upon his trial stands mute, and obliquely refuses to plead, one of the penalties imposed for contempt of the court, is to be condemned ad panem fortem & durum, i.e. To have only hard, dry barley-bread and pudder-water. The record of the plea, is kept in the office. See Co. Pac. 1727. See also the other

Pannage, or Pannage, (Pannagium,) is that foort that the swine feed on in the woods, as maid of beech acorns, &c. which some have call'd Pannese. It is all the money taken by the officers, for the food of hogs with the maif of the King's forreft, or the money due to the owner of the name for it. Cowell, ed. 1727.

Panneus, A garment made with flines. Cowell, ed. 1727.

Pantiles, To what duties liable. 4 Will. & M. cft. 2. See Bithor.

Pape. See Bpape.

Paper, The drawback on consummation of foreign paper takes away. 10 Geo. 1. c. 27. f. 4. See Books, Customs.

Paper-books, Are the fifses in law, &c. Upon fo- cial pleadings, made up by the clerk of the papers, wil be an officer for that purpoft. 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 fo paper-books, the names of the counsels who have given such pleas, as well on behalf of the plaintiff as of defendant; and in all paper-books delivered to the judg of the court, the names of the counsels, who sign those pleas, are to be subscribed to the books, by their clerks or attorneys who deliver the fame. Pofeb. 18 Car. 2 Litt. Hist. 268.

Paper-office. All acts of the council-board, occional proclamation, dispatches and instructions for reign minifters, letters of intelligence, and many other publick papers communicated to the King's council, the two secretaries of state, are afterwards transmifled the paper-office, which in them are all disposed in a paff good fcurity and convenience within the King's Roy- palace at Whitehall. See Mr. Nichofon's Engl. Hift. Lit. part. 111. pag. 9. Also an office fo call'd, belonging the King's Bench.

Papifts. The laws for restraining the growth of perty, and by which papists are subjected to divers pains, forfares, difabilities and inconveniences, may considered in general, as relating to popifh recantate, fo who refufe to make the declaration against popery, as such who promote, encourage or profes the popifh re- gion; and these laws, the made for the advancement religion and the publick good, yet being confidered penal laws have, like all other penal laws, been confi- fricially. 3 Boc. Atit. 779.

1. Of the offence of not making a declaration again popery.

2. Of the offence of profifying or professing the popifh religion, viz. in faying or bearing mass, giving or receiving popifh-communion, or selling popifh books, keeping fhit withholding a competé maintenence from a profefen chif and profenting to a church.

3. Of the difabilities of papifts to parochs.
1. Of the offence of not making a declaration against peers.

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, which he is to give, 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 erroneous and heretical; and that every such peer, who is adjudged a popish 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 500l."

By the 30 Car. 2. stat. 2. cap. 12. 13. it is enacted, "That every person who shall be a sworn servant to the king shall take the said oaths, and subcribe the said declaration in Chantery the next term after he shall so be a sworn servant, &c. and that if any such person shall not take the said oaths, or shall refuse or neglect to appear in the presence of the king or queen, or shall come into the court or house where they are, or any of them reside, he shall suffer all the penalties expressed in the foregoing sections; unless such person coming into the king's presence, &c. shall first have licence so to do by warrant under the hand and seals of fixe privy councillors, by order of the privy council, upon some urgent occasion therein to be expressed; which licence shall not exceed ten 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 31 & 32 Car. 2. cap. 5. 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 menial servants to some ambassador or publick gent,) and except all such as used some trade, or merity, or some manual occupation at the time of the said 28th, in London, &c. and also except all such persons as had their dwelling in London, &c. within six months before the 3rd of February 1688, and no dwelling elsewhere, and entitled their names to the felion's before the first of August 1689;) and that every such justice shall render the said evidence, and refuse the same evidence; and that every such person refusing 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 fact, shall suffer as a popish 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 giving the said declaration, or not appearing before the said justices upon notice to him given or left at his usual abode, by one authorized by warrant under the hands and seals of the said justices, shall keep any arms or ammunition or horfe above the value of 51. in his own possession, or in the possession of any other person in his use, (other than such necessary weapons as shall be necessary for the use of the person in his house or person,) and that any two justices of peace, by warrant under their hands and seals, may authorize any persons in the day-time, with the affittance of the constable or his deputy or titlingman, to search for all such arms, &c. and horfe, and seize them to the king's use, and that the said justice and such delivering the said arms and ammunition at the next quarter-sessions in open court; and that whoever shall conceal, &c. or shall be aiding to the concealing any such arms or horfe, shall be committed to the common gaol by warrant under the hands and seals of any two justices of peace, and also forfeit twenty shillings; and that who soever delivers any such arms or ammunition, as the former by warrant, shall have the full value thereof, to be awarded to the felions, &c. and that such refusers of the said declaration, &c. shall be discharget whenever they make the same,"

2. Of the offence of profusing or promoting the popish religion, viz. in fishing out, hearing mass, giving or receiving popish education, or fellowing popish books, keeping schools, withholding a competent maintenance from a protestant child, and presenting to a church.

By the 2 3 Eliz. cap. 1. feft. 4. it is enacted, "That every person who shall pay mafs, being thereof 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 said 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 Shaw. 216. Also it is enacted by the 11 & 12 W. 3. "That every person who shall apprehend any popish bishop, priest, or Jesuit, and shall not deliver the same into the custody of the king, or exercising any other part of the function of a popish bishop or priest, shall receive 100l. of the sheriff; and that every such popish bishop, &c. (except being a foreigner, he be entered in the secretaries office, and subscribe only in the house of a foreign minister,) shall be adjusted under the penalties of the common law."

By stat. 1 Jac. 1. cap. 4. feft. 6. 7. it is enacted, "That if any person or persons under the king's obdgence shall go or send, 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 to enter into, or reedle in, or repair to any college, &c. of any foreigner, or of any person, who shall be voided, or restrained, or fuced, or excluded, or conscribed, by law; or reedled, persuaded or strengthened in the popish religion, or in any part to profess the same, every such person for fending such child, &c. shall forfeit 100l. and every such person for paffing or being fent, &c. shall in respect of him or herself only, and not in respect of any of his heirs or members, be liable to the penalty of 500l., and all his effects, heir-stands, chattels, debts, legacies or sums of money, &c. whatsoever; and that all estates, terms and other interest whatsoever to be made, suffered, or done to the use or behoof of any such person, or upon the right or title of another, or for any part of or in any way, or for any other man, without the licence of the king, or of any of his privy council, (whereof the principal secretary to be one,) under their hands and seals; that then every such child shall take no benefit by any gift, conveyance, deed, devise, or otherwise, of or to any heir-stands or chattels, till such child be of the age of eight years, or above, take the oath of obedience before some justice of peace of the county, liberty, limit, where the parent of such child did or shall inhabit; and that in the mean time the next of kin to such child, who shall be no popish recusant, shall have the said heir-stands, &c. for so given, &c. and such child shall be accounted a free man, and take the said oath, and receive the felation; and after such conformity, &c. he who hath received the profits of the said heir-stands, shall account for the same, and in reasonable time make payment thereof, and restore the value of the said goods, &c. and that whoever shall send such child, or cause or procure to be sent, or receive to be received, shall be liable to the sum of 500l."

It is farther enacted by 3 Jac. 1. cap. 5. feft. 16. "That if the children of any subject within the realm, (the said children not being soldiers, mariners, merchants or their apprentices or factors,) shall be sent or go beyond sea to prevent them good education in England, or for any other cause, without the licence of the king, or of any other person, &c. (whereof the principal secretary to be one,) under their hands and seals; that then every such child shall take no benefit by any gift, conveyance, deed, devise, or otherwise, of or to any heir-stands or chattels, till such child be of the age of eight years, or above, take the oath of obedience before some justice of peace of the county, liberty, limit, where the parent of such child did or shall inhabit; and that in the mean time the next of kin to such child, who shall be no popish recusant, shall have the said heir-stands, &c. for so given, &c. and such child shall be accounted a free man, and take the said oath, and receive the felation; and after such conformity, &c. he who hath received the profits of the said heir-stands, shall account for the same, and in reasonable time make payment thereof, and restore the value of the said goods, &c. and that whoever shall send such child, or cause or procure to be sent, shall be liable to the sum of 500l."

1 6 E. Alfo
As it is enabled by 3 Car. 1. cap. 2. 6. That if any person under the obedience of the King fail to, or shall convey or sell, or cause to be so conveyed, any part of the King's dominions into any parts beyond the seas, out of the King's dominions, to the incumbrance of any person, resident, or trained up in any priory, abbey, monastery, populous university, college or school, or house of jewels, preists or in a private populous family, and shall be there by any person pensioned or professed or entertained, or received, or forwarded, in any manner towards the maintenance of any person going or gone, and trained and instructed as aforesaid, or under the colour of any charity, towards the relief of any person, religious or holy whatsoever, every person so hindering may take, 1st, 2d, 3d. or 4th. in his own hands till he, according to the 1 E. 1. take the oath of supremacy required on laying out livery; for the words of the statute 3 Jac. 1. are, shall take no benefit by deed, &c. not that the party should not take by deed; and therefore the eftate does not well vest absolutely in B, the fitter and next heir, but her right is to receive all the profits and the duties of the vender, for which in case of common lands the right might enter; but in this case the King is interested, and is not obliged to give livery to the heir, till such time as the oath of supremacy be taken. 

Hob. 73. 74. Lee 59. Tholet's cafe.

So if an heir being beyond sea, should bargain and sell his lands to a stranger, the bargain in such cafe will prevent the next of kin, and the bargainee may take the lands out of the hands of the next of kin, in case he had entered; for the eftate never vested absolutely in such next of kin, but in such cafe the King may refuse to give livery, and to give the bargainee the same of the heir, except he the heir himself appears and takes the oath of supremacy in his proper person. 

Hob. 74. per Hbert. G. C. Gerrard in the year 1660. sold the eftate in question to the use of himself and the heirs male of his body, remainder to the heirs male of the body of Thomas fiill Lord Gerrard, by virtue of the deed in the forementioned, and the title and recoveries, and the eftate that he had not suffered several recoveries, and the eftate upon his marriage in 1850. and died without issue in the year 1707. leaving Philip his only brother then surviving, who was heir male of the body of Thomas full Lord Gerrard; upon the death of Lord Charles, the Duches of Hamilton claimed the eftate as rightfully of C. Gerrard; notwithstanding the eftate-tail limited to the heirs male of the body of Thomas Gerrard subsisting in Philip, alleging, that Lord Charles and his brother Philip, being fast abroad and educated in a populous feminine, were so utterly incapable of taking any eftate, that the right of the eftate, either by gift or marriage, devolved to the heir male of the body of 

Hob. 1. cap. 2. sect. 6. that he had for disolved Lord Charles to take the eftate by defect, that the recovery suffered by him was void, and that the same eftate being then held by Philip, that there being no person in being who could take the eftate-tail, the Dutchess as heir at law, must be intitled to take at present, as if the eftate were actually spent. But it was resolved, that the words of the act being, that the offender shall be dispossessed in respect of himself only, and not in respect of any of his heirs or successors in interest, purchased, this questions and refrains the disability; so that the act does not extend beyond the person offending, nor beyond the time of his non-conformity; so that the act hath preferred in the offender an ability to inherit, &c. for the benefit of posterity; and this act having made no application of the profit to the publick, and not being a case so frighted for a publick offence, the King is intitled to the nulty; and to create in the offender a total disability would be very inconvenient, for in the case of an inexterminance, it would be difficult to know when or in what manner the heir should take; it could not be in the life, since the King is intitled to the nulty, nor could it be in the person living; and if there be a case under no disability cannot take, it would be merely by construction to carry the eftate over his head for the benefit of a remainderman, who was not intended to take as long as there was any issue of a prior tenant in tail; and an heir can inherit himself only through his ancestors, and such as are inheritable; that this is not like the case of a monk, for in times of papery he was cially dead; the 3 Jac. 1. gives the pernanny of the profits, in cafes of disabilities, to the next of kin, that is not a papally recusant; and R. Ow. was the next protestant of him; the 3 Car. 1. does not repeal the 1 Jac. 1. but was made to explain, amend and abridge the 1 Jac. 1. the 3 Jac. 1. is, that act to arise; the 3 Car. 1. has provided, that it shall be upon conviction, and expressly makes a forfeiure for life, and a retribution in cafe of conformity in which the former act was silent; so that if the forms act were to be put in execution, under the explanation of 3 Car. 1. there being no penalty in the cafe, the Dutchess could have no title, but the land on conviction would be forfeited for life, which must be the King Hill. 12 Ann. in G. B. and affirmed in the booke of Lords; Torrery ver. Folland, alias The Dutchess of Hamilton's cafe.

By the 3 Jac. 1. cap. 2. sect. 25. it is enacted, "That no person shall bring from the seas, or shall print, but or fell any papally primers, tables, manuals, blogs, papally catechisms, missals, brevians, portals, legends and lives of saints, containing superfluous matter printed or written in any language whatsoever, nor any other fuperfluous books, prints or writings in the English language, but shall be put on forfeiting forty shillings for every book, &c. and the book to be burnt." By the 11 & 12 W. 3. cap. 4. sect. 3. it is enacted, "That if any papally, or person making profession of the papally religion, shall be convicted of keeping school, or taking upon himself the education of the publick, or government, or being transgressing the rules and laws of youth, in any way within the realms of the dominions thereunto belonging, they shall be adjudged to perpetual imprisonment." By the 11 & 12 W. 3. cap. 4. it is enacted, "That if any papally parent, in order to compel a protestant child to a change of religion, shall refuse to allow such child a sufficient maintenance, able to live upon the personal ability of such parent, and to the age and education of such child, the Lord Chancellor upon complaint shall make such order therein as shall be agreeable to the intent of the said act." By the 3 Jac. 1. cap. 2. sect. 18. 19. 20. 21. Papally recusants convicted are disinnicted to prefer to a church, and by the 1 W. 1. & M. cap. 26. this disability is extended to persons refusing to make the declaration against popery, mentioned in 30 Car. 3. And by the said statute 1 W. 1. & M. cap. 26. sect. 4. it is enacted, "That if the truste, mortgages or grants of any avoidance, whereby the property is conveyed for any papally recusant convicts, present without giving notice in writing of the avoidance to the university, within three months after the avoidance, he forfeits 500 l. And by the 12 Ann. cap. 14. This disability is extended to all persons making profession of the papally religion, to which purpose it is enacted, "That every papally of
... for Moor and Jon. 

3. Of the disabilities of popish to parochial.

The statutes relating to estates conveying by or to papists, and the disabilities they are under to take by parchial, &c. are the 11 & 12 H. 3. 3 Geo. 1. and 11 Geo. 2.

By the 11 & 12 W. 3. 3rd. 4th. it is enacted, "That from and after the 29th day of September, which shall be in the year of our Lord 1727, or subsequent, no person professing the popish religion, or popish, shall, or any such person shall, hold any benefice or any benefice or any benefice obtained from such papist, without the knowledge and belief, such benefaces were not made with the said intention."
By the 3 Ge. 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 H. 3. intituled, An act for the further preventing the growing of popery, and upon another act made in the 1 Jac. 1. for the due execution of the statute called the act for the better governing of the minor priests, recusants, and other acts made against papists and papists 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, manors, lands, tenements, or hereditaments, or of any interest therein by peron 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, to or for protestant purchaser and purchasers, and merely and only for the benefit of papists, shall be avoided or impeached for or by reason, upon pretence of any of the disabilities or incapacities in the said acts, or of any of them contained, incurred or suffered 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 before the said sale, or any inchoation of such sale, the papists intimated the advantage of such disability or incapacity shall have recovered such manors, meislages, lands, tenements and hereditaments, by reason of such disability or incapacity, and have entered such claim in open court at the general seassions of the peace for the county, city, riding or division, wherein such manors, lands, tenements, or hereditaments lie or arise, and bona fide, and with due diligence, pursued his remedy in a proper court of justice for the recovery thereof."

Provided nevertheless, that whereas it was amongst other things enacted by the said 11 & 12 H. 3. that from and after the 1st day of April in the year 1700, every papist, or person making profession of the popish religion, should be disbarred, and was thereby made incapable to purchase, either in his own name, or in the name of any other person or persons, to his or her use, or in trust for him or her, any manors, lands, profits out of lands, tenements, rents, terms or hereditaments, within the kingdom of England, dominion of Wales, and town of Berwick upon Tweed; and that all and singular eatates, terms, and any other interest or profits whatsoever out of lands, from and after the said 1st day of April to be made, suffered or done, to or for the benefit of any such person or persons, or upon any trust, in consideration mede or taken immediately, or to or for the benefit or relief of any such person or persons, shall be utterly void and of no effect, to all intents, constructions and purposes whatsoever: It is hereby declared and enacted, "That the said recited part of the said act of parliament shall not be hereby altered or repealed, but the same shall be and remain in full force as if this act had never been made."

And it is further 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 thereof, shall pass, alter or change hands, or be disposed of, by any person professing the popish religion, by any deed or will, except such deed within six months after the date, and such will within six months after the death of the testator, to be inrolled in one of the King's courts of record at Wemifliger, or elsewhere within the same county or counties wherein the manors, lands, or tenements were by the said last will and testament due to the judges of the peace, and the clerk of the peace of the same county or counties, or of two of them at the leaf, whereof the clerk of the peace to be one."

Stat. 11 Geo. 2. "Whereas persons professing or edu- cated in the popish religion are by divers acts of parlia- ment subjected to several disabilities and incapacities, which may affect persons concerned in the popish religion, and whereas many persons have already conformed to the protestant religion, and are willing to submit to his Majesty's government in all full and ample manner as any other of his Majesty's subjects, and others are likely to do so; it is enacted, That all and every person or persons, being reputed owner or owners, or in possession or receipt of the rents and profits of any manor, manors, lands, tenements, or hereditaments, or of any interest therein, who having been reputed to be a papist or papists, or educated in the popish religion, hath or have conformed to, or hereafter shall conform to, and profess the protestant religion, and hath or have taken or shall take the oaths of allegiance, supremacy and abjuration, and shall so subscribe the declaration as aforesaid, shall be and become a freeman, and be able to hold, possess and enjoy all such manors, meislages, lands, tenements and hereditaments freed and discharged of and from the disabilities and incapacities in the said acts or of any of them contained, incurred or forborne, and so discharged by such person or persons in good faith, to the reputed owner or owners, or in possession or receipt of the rents and profits as aforesaid, or by any other person or persons by, from or thro' whom the title to such manors, meislages, lands, tenements and hereditaments, or any interest therein, was or shall be derived or supposed to be derived for such estate, right, title or interest, to such reputation, reputed owner or owners, or in possession or receipt of the rents and profits as aforesaid, or by any other person or persons, or in the intervention of such persons, or in other conveyance or sale, for so long as such estate, right, title or interest, to such reputation, reputed owner or owners, or in possession or receipt of the rents and profits as aforesaid, or by any other person or persons, may be continued, and it is further enacted, That in such case or estate, right, title or interest, to such reputation, reputed owner or owners, or in possession or receipt of the rents and profits as aforesaid, or by any other person or persons, for so long as such estate, right, title or interest, to such reputation, reputed owner or owners, or in possession or receipt of the rents and profits as aforesaid, may be continued, as aforesaid, the same shall be recovered, or shall hereafter recover such manors, meislages, lands, tenements and hereditaments, by judgment or decree in some action or suit already commenced, or hereafter to be commenced, six calendar months at least before the making of such record, and shall be prosecuted with due diligence.

Provided nevertheless, that this act, or any thin herein contained, shall not take away or prejudice the interest or title of any reputed owner or reputed owner's interest, or any person intituled to take advantage of such disability or incapacity, who now is or are in the actual possession of, or shall have, precedent to the making of such record, been in quiet possession of any such manors, meislages, lands, tenements and hereditaments, in the space of two calendar months. Provided always, That nothing in this act contain shall extend to take away or prejudice the right of any person intituled to any remainder or reversion in any such manors, meislages, lands, tenements and hereditaments, in case such person shall pursue his or her right in some action or suit to be commenced within the space of twelve calendar months next after the precedent estate or estate, on which such remainder or reversion depends and is expiring, shall be determined; or within twelve calendar months from and after the death of Sept. 1738. if such precedent estate or estates be already deceased by the death or deaths of any person or persons whose whole estates have been concealed from or not known to
the personal title to such remainder or reversion, by
"cause of the having being confined the fear of
private and clandestine manner at home, and shall protec-
tute such action or suit with due diligence.
On the first of these statutes there have been the fol-
lowing covenants and refolutions.

John Roper, Esq. being seised of several manors, lands,
and debts, and all debts of whatever description,
respectively the 17th and 18th of January 1708, granted
and conveyed the same to William Constable, Richard
Sawt, and Daniel Hickman, and their heirs, in trust to
hold all the said John Roper and his heirs. The 9th of March
1708, the said John Roper made his will, and after re-
stituting the said estate and release, and the power refer-
ed to him over the surplus of the said estate, he bequeathed
several pecuniary legacies to his relations, and the residue
of all his real and personal estate he gave to William Con-
stable, Richard Sawt, and Daniel Hickman, and their affiliates
for ever, and appointed them joint executors; the 1st of
April 1709, he added a codicil to his will, and thereby gave
the further several legacies therein mentioned, and all the
remainder, whether in lands or personal estate, he gave to his
executors Mr. Roper and Mr. Constable. The said John Roper
after his death, and Mr. Roper and Mr. Constable
bought their bill in Chancery against Edward Roper, Esq;
and at ear at law of the said John Roper, and also against
Hickman, Hewit, Sawt, and others, to have the trust
estate hold, and for an account of the profits, and after
the debts and legacies paid, to have the surplus-money
and profits, to have all the residue of the said
estate, belonging to the said Roper, to be paid
the said Edward Roper by his
anwer inquired, as that at law to the teator he
said to be intitled to all such real estate as was undisposed of by
him, and that Mr. Roderick and Mr. Constable were then
ad at the teator's decipte packets, and as such, by
the 12th 1703, were incapable of purchasing any ma-
nors, lands, profits out of lands, &c. The said Hewit and
Hickman by their answer inquired, that the real estate
divided by the said will must be allowed to be severed as the
remaining part of the teator's lands, did not control
he devicethereof mentioned in the will; for that if the
plaintiffs were incapable to take the lands as purchasers
by the devicethey were to be effected as persons not
afife, and that the codicil as to the lands was void;
that if the plaintiffs were capable, yet such devicethat did not
make the devicerent, with interest, a part of the said Eates
for the payment of the debts and legacies, and that the
reversion in fee belonged to the
the said Hewit and Hickman; and they brought a cross bill,
influting thereby on the same matters; and the legates
bought a bill for payment of their legacies. The 27th
of June 1712, the said causes came on to be heard before
the Mayor and Aldermen, Hickman, my Lord Chancellor
Herbert, who decided that the

B. Justice Powell, and the Maller of the Rolls, and
after time taken to consider of the cause, my Lord Chan-
"lers, Treor Ch. the Maller of the Rolls and justice
and justice: and with the consent of the party in
the purchase-money, (after debts and legacies paid)
Mr. Roderick and Mr. Constable was good, notwithstanding
the said disabling act; the surplus being a per-

Vol. II. N° 111.
due arising by such gift she devised to her said granddaughter Frances, when she should attain the age of 21 years, or be married with the consent of the said trustees, and soon after died. The said devisors, at the age of fifteen, were married to Filkins, according to the ceremony and usage of the church of Kent, and a week afterward the said Geo. Filkins died at the age of 18 and the devisees, according to the directions of the statute, it was held, that she was within the first clause, and that a devise to a papist at 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 period for their execution, whether they would conform or not; and the bill exhibited by the said presentors that the presentor was disenabled by will. 3 Bac. Ab. 750. Hilly v. Filkins. Titn. 11 Geo. 1.

J. S. a papist, made a settlement of his estate to trustees, to the use of the trustees and heir, in trust for A. for life; and to the said trustees to preferre contingent remainder; remainder to the first and every other son of A. and for default of such issue, then in trust for B. and his issue; A. was a papist, and B. a protestant; B. exhibited his bill in Chancery, suggesting, that A. was a papist, and had no son, and that therefore the trustees might account to him for the rents and profits of the trust estate, made the heir, and as such heirs, and on hearing this cause before the Lord Justicefield, and afterwards by the Lord King, they both held, that though the trust to A. was void, he being a papist, yet that notwithstanding, the legal estate was still in the trustees, because they were trustees not only for the papist, but by protestant, or the first and every other son of A., who were yet unborn; and as they were trustees to preferre contingent remainder for such sons who might be protestants, they thought that the estate should remain in the trustees for that purpose; and they held, that the heir at law was intituled to receive the profits during the life of A. as a trust undisposed; but that B. the remainder to arrive into right had nothing to demand of A. without a son capable of taking; and this decree was affirmed in the house of Lords. 3 Bac. Ab. 757. Carrick v. Errington. Titn. 9 Geo. 1. in Coae.

The case upon a special verdict in ejectment was:

Thomas Darrell had one brother and four sisters, and being seized in fee by will 4 December. 1703, devised the lands in question to trustees, to the use of them and their heirs, in trust for his first and every other son in tail male; and for want of such issue, remainder to his brother Arthur for life, remainder to his first and every other son in tail male; and for want of such issue, that the same issue, and the remainder of the same issue, and for want of such issue, to be held for the sole and proper use and benefit of such eldest and first son lawfully begotten, or to be begotten of John Darrell, as shall not be heir at law and inheritor to the said John Darrell, and the heirs of his body, and for default of such issue by him, remainder to the third, and fourth and fifth, and every other son of the said John Darrell, and the heirs of their respective bodies. The trustees, by a clause in the will, were empowered, by the rents and profits of the estate, or by mortgage and sale, to raise so much money as would satisfy the testator's debts. Thomas and Arthur both died without issue, John Darrell is living, and has leven sons; George the defendant is the second son; and all the sons of John Darrell are papists, and educated in the popish religion, except his youngest son, who is too young to be said, as yet, to be of any religion; George Darrell was under eighteen years of age when the limitation by the devose fell upon him, but is now above eighteen years, and has not been married, neither is he married by any right of Geo. 2, and is married, has now two sons very young, for whom, as well as for his wife, he has made a settlement of free lands; the four fathers of Thomas Darrell are kinsmen of the plaintiff, as heirs at law, and the question is, whether George the son of Arthur, or the heirs at law, be to interfere for the plaintiff, the heirs at law, and if it was urged, 1st. That GEORGE is the son of the deceased, and that papists that shall fail, within six months after they arrive at the age of eighteen, to take the oath of allegiance, are by the 5th statute disabled from purchasing; and therefore as a devise is a purchase, and to be limited, 18, and by the Lords, in the case of Roper and Radcliffe, consequently George Darrell takes nothing by it. 2dly. That the devise was void for uncertainty, being to such chief and first son of J. J. as shall not be heir at law to him; but as no one can say who will be heir to J. J., and as the whole devise is a large one, the rights of the very first son are sufficient; and he who is to be heir is not to take, for he may but a son who will not be heir can take, for both descriptions must coincide. Hilly. 29. Hardwicke Ch. 2.

In breaking the case, two objections have been made to the defendant's title; 1st. That the limitation, under a statute void for uncertainty, should not be put to the uncertainty of the description. 2dly. That supposing the description to be certain enough, yet if it were not made good; and it seems natural to imagine, that by the words of the will, the testator intended the second son of John Darrell should take, and the rather, as the testator had made the next limitation to the third, fourth and fifth sons, of the said John Darrell, but if the second son cannot take, yet it is to the third, 3dly. Sons are well described, the follows are to take, and at present are, and it seems that the son is therefore certain. As to the second objection, I think myself bound by the determination of the house of Lord in the case of Roper and Radcliffe, that the word part chases extends to a devise, and therefore that a papist is in capable of taking an estate by will; but yet, be the devise in the first son of A. with their own strength, and not on the weakness of the following title; and my greatest doubt is this; the devise is to trustees to the use of them and their heirs, &c. I think this would clearly be a devise to the use of the trustees, though the clause of raising money by rent was omitted; so here is a devise to trustees in trust not only for the second son of John Darrell, but for all other his sons now living, one of which is a pope, and it has been said, and indeed, that the devise being for the benefit of the papists, the trust itself void; but the question is, if the trust should not be for the benefit of papists, in the present case, if young son of John Darrell may be able to take, ought appears to the contrary; and therefore I think it this latter part of the trust being lawful support the legal estate in the trustees; and here he put the case supra Carriick v. Errington, and said, that according to their solution in this case, the lands in question cannot be void, because it was in the trustees, because here is a devise to a son of John Darrell, who was a pope, as well as for other children yet unborn, so that the papists have no title to recover in this action, but have their remedy, and if they have any, it seems to by bill in equity against the trustees for an account of profits, and if any thing, the court in the above-mentioned case, that the estate could not well in the remainder, for he being then in by purchase, it could never afterwards devolved, for the benefit of such child as should happen to have; but he said, that he did not that this as his absolute opinion, but only to point out the difficulties which afflict the court; it was adjourned and no further proceeding was had therein. 3 Bac. 758. Mortwood v. Darrell. Hilly 8 Geo. 2. in D. R.

A mortgage was made to a papist, who alleged a protestant for a full consideration; an ejectment was brought against the alligree by a subsequent mortgagee, who recovered by reason of the disability of the first mortgagee. The conveyance brought in Chancery, and my Lord Chancellor was of opinion that a mortgage to a papist is void; but in this case the assignee is a protestant, and the trial in ejectment, were both before the 3 Geo. 1, which, were it otherwise, would it fess have made an alteration. 3 Bac. 759. Peleman v. Peleman. Titn. 3 Geo. 1.

In a case which came on before this Lord King in a court of Chancery, it appeared, that Lord Der
was pleased of a long term for years, and made his will, and his lady, who was a papist, executrix thereof: because it was not the case of a forfeiture, but it was of the disabling act 11 & 12 W. 3, the term vested absolutely in her; and this was not a purchase with- in that act; and he said, that a papist may be tenant in lower, or by the currelye; because in all these cases it is my operation of law, and not by any act of the party, that he was to come to it. 3 Boc. Abr. 799, on Ld. Donin's will.

It has been adjudged, that a papist may devise to a satisfactor; in which case it was agreed, that where an ancestor died sise of an estate of inheritance, it defends upon and vests in his heir, (though a papist) for the benefit of his issue, and the next proprietor who has only a right to the perception of the profits during the non- uniformity of the heir. 3 Bac. Abr. 799, Aludin v. Briggis, Poch. 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 the life of the survivor of them; then to the use of the first and every other man in tail, remaining to the right 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 devised all his lands to her by his will. In 1753, Mrs. Paine, by her real estate to the defendant, subject to a few legacies mentioned in her will, but lived and died a papist; but then being difficult 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 defendant, to set aside the marriage settlement, and the will of Mrs. Paine the husband, under which Mrs. Paine claimed; and in particular prayed, that the defendant might dis- cover whether Mrs. Paine the wife, under whose will he claimed, was a papist or not. To which the defendant led the statute of 11 & 12 W. 3. Upon arguing his plea it was insisted upon for the defendant, that it stood but on the footing that the parte was never bound to discover what might subject him to the penalty of an act of parliament; and that the statute of 11 & 12 W. 3. was a penal law, and the party, who would like the advantage of such law, would not be sisset to discover in court of equity, which never affils a forfeiture; be, the would claim any thing forfeited, must make out the scripture himself; for no person shall be obliged to dis- cover a fact that would be a forfeiture of his own estate. A compoher commits walle, it is a forfeiture of his estate to the lord of the manor; but if the lord of the manor comes into this court for a discovery, whether the estate is his or not, he is not bound to answer; nor is the defendant in question, whether Mrs. Paine is or not, because the discovery of that fact might be the life of her estate. That dishes and forfeitures were of the same nature; and that a total incapability or disability to hold at all, which is the case of papists, was certainly as much a penalty, as a forfeiture of an estate which the party before was capable of holding; that as Mrs. Paine would not have been obliged in her life-time to discover whether she was a papist or not, the estate was never bound to discover what might subject him to the penalty of an act of parliament; and that the statute of 11 & 12 W. 3. was a penal law, and the party, who would like the advantage of such law, would not be sisset to discover in court of equity, which never affils a forfeiture; be, the would claim any thing forfeited, must make out the scripture himself; for no person shall be obliged to dis- cover a fact that would be a forfeiture of his own estate. A compoher commits walle, it is a forfeiture of his estate to the lord of the manor; but if the lord of the manor comes into this court for a discovery, whether the estate is his or not, he is not bound to answer; nor is the defendant in question, whether Mrs. Paine is or not, because the discovery of that fact might be the life of her estate. That dishes and forfeitures were of the same nature; and that a total incapability or disability to hold at all, which is the case of papists, was certainly as much a penalty, as a forfeiture of an estate which the party before was capable of holding; that as Mrs. Paine would not have been obliged in her life-time to discover whether she was a papist or not, the estate was never bound to discover what might subject him to the penalty of an act of parliament; and that the statute of 11 & 12 W. 3. was a penal law, and the party, who would like the advantage of such law, would not be sisset to discover in court of equity, which never affils a forfeiture; be, the would claim any thing forfeited, must make out the scripture himself; for no person shall be obliged to dis- cover a fact that would be a forfeiture of his own estate.
A widow retained a chain of diamonds and pearls, against the devil of her husband; and two judges held, that the might detain them, because they were convenient for a woman of her quality; but two other judges were of a contrary opinion, that parapernalia should be not only necessary but necessary; otherwise the widow shall not detain them against the express devil of the husband: though it is said it was adjudged, that the widow might detain necarry apparel, and likewise ornaments, against the devil of her husband; and that he could not dispute of them by will, 'tis he might have told them in his lifetime; for immediately upon his death, the property is vested in the widow. *Cra. Cas. 347.* 2 Nelf. Abr. 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 parapernalia, the devil shall have as her own goods, and may dispose of at her death; or take after the death of her husband. *Br. 9. Dut. & Stat. 17.*

Though by our law the wife may not make a will of and about her estate, which, in the affent of the husband whil't he lives; because the property and possession is in him. 


Paravalle, Is a compound of two French words, par, per, and anguler, dimiter. It signifies in our Common law the lowest tenant, or him that is tenant to one that holdeth his fee over of another, and is called common paragog, because it is presumed he hath profit and avantage by the land, 2 Inst. leg. 260. and Co. 9 Rep. Cosy's cafe. For the use of this word, see F. N. 8. 135;


Parcel-makers, Are two officers in the Exchequer, that make the parcels of the ecclesiastors 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 same to one of the auditors of the court, to make an account with the ecclesiastor thereof. *Cassal. ed. 1772.*

Parcellators, (Quasi parcels, Rial. 2. parlactic dix victorious.) Are two offices, viz., according to the course of Common law, or according to custom: Parcellators according to the Common law are, where one feates of an estate of inheritance, hath issue only daughters, and dies, and the lands depend to the daughers; then they are called Parcellators, and are but as one heir. The same law is, if he have not any issue, but that his fillers be his heirs. Parcellators according to custom any, where a man

is feated of lands in general, as in Eves, and other places transferred, and hath issue divers sons and dies, then the sons are parclemers by the custom. *Cassal. ed. 1772.* 

See Co. 3. C. Leg. ed. 3. c. 221.

Parcellers holding in capite shall all do homage, 12 H. 3. 3. Parcellers and joint-tenants shall do but one suit of court, St. Alb. 53 H. 3. c. 10. Shall join in public nuisance, although it be opposed to different degrees, St. Cl. 6 Ed. 1. c. 6. See Collectors, Joint tenants, Partition.

Partnership, Is the holding of lands jointly by partners, when the common inheritance is not divided. *Lit. 55.*

Partition, See Stamps.

Pardon Trau. is a writ that lies against him who violently breaks a pound, and takes out beasts thence, which for some trespasses done were lawfully impounded. *Reg. of Visit. 11. c. 17. and *Prat. Nat. 11. c. 100.* For the word pardon was more frequently used for a pound, to confine trespassing or flaying cattle; whence enforcing to, imposed, and imparting, pounding, *Cassal. ed. 1772.*

Pardon, (Pardematis, venia,) Is the remitting or forgiving of a fellow, or other offence committed against the King; and this is two-fold, either ex gratia Regis, the King himself, or by course of the Court, Stann. Pl. Cor. f. 47. Pardon ex gratia Regis, is that which the King, in some special regard of the person, or other circumstance, affor'd him absolute prerogative Pardon by the course of law, is that which the law's equity afforded for a light offences; as homicide cuham when one killeth a man, having no such meaning. High Symbol, part. 2. 2. inculcations, fol. 42.

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; of it validity of a pardon; and what undue power, in such pardon, in what cases, or for what offences may be pardoned.

3. Statutes concerning general and other pardons.

1. By whom a pardon may be granted, and in what cases and for what offences it may be granted.

The power of pardoning offences is infeparable incident to the Crown; and this high prerogative the King is in truthed with upon a specific confidence, that he will only use it against the most heinous crimes. It may be prudently willing to have excepted out of it, the case of public offences, which the wisdom of man cannot possibly make to perfect as to suit every particular case. 1 Shot. 294.

But it feems, that anciently the right of pardoning offences within certain diffinctions was claimed by the lords marchers and others, who had jura regaliae by ancient grants from the Crown, or by prescription. But now by the 27 H. 8. 24. sect. 1. it is enacted, " That no pardon or pereons, of what estate or degree over the be, shall have power to pardon or remit any tressasons or felonies whatsoever, nor any necessities to the same, or any outlawries for such offences, whether committed in England or Wales, or the marches of the same, but the King shall have the whole and sole power and authority thereof, and all the power and right of the imperial crown in this realm, as of good right and equity it appertaineth to the same." *35 H. 8. 1. 1. 333.*

It is laid down in general, that the King may pardons any offence whatever, whether against the Common or Statute law, so far as the publick is concerned in it, after it is over, and consequently may prevent a popular exion on a statute, by pardoling the offence before the suit is commenced; but it seems, that he cannot wholly pardons an exion so it continues such, because last pardon would take away the only means of compelling redress of it; yet it is said, that such a pardon will law the party from any fine to the time of the pardon. *Pigeon 487.* Kello. 154. 2. Co. 29. 30. 3. Hyatt 237.

Pound. 333.
But it seems agreed, that the King can by no previous licence, pardon or dispensation make an offence dispensable which is made by law as being either against the law of God or against the law of the land, and that the King cannot thus excuse any act or deed to be indissoluble at Common law; and that a grant of this kind, tending to encourage the doing of evil, which is the chief end of government to prevent, is plainly against reason and the common good, and therefore void.

Dec. 7. 5 Co. 35. 12 Co. 26.

And let it not be inferred, 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 fragile instance, and contrary to this rule; because a grant of this kind, tending to make a gaper or a practice, and, as the maintenance of his negligence, is plainly against the common good.

2 Hawk. P. C. 389. 3 H. 7. 15. pl. 10.

But where a thing in its own nature lawful, is made unlawful by parliament, as the carrying bell-metal, &c., out of the realm, importing mercantile and foreign ships, selling wines beyond a certain price, or without a licence, making guild, &c., offering money of a base alloy, &c., it was formerly taken as a general rule, that the King might dispense with it, as a part of a future or past place, or person, so far as the public was concerned in it; unless such dispensation could not be but attended with an inconvenient evil, and that the King's true and just end for which the law was made; as the licensing a particular person to import foreign cards or wares, &c., in which case it was commonly taken to be void; also, where a flature gives a particular interest or right of action to the party grieved, as the statutes of mortmain, tho' against the maintenance, foreible entries, carrying difficulties out of the hundred, &c., &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, which is the clause of non efchant, shall be void; it seems there has been always granting against it, the legal only mode of such clause could dispens with it. 2 Hawk. P. C. 390, 390. and several authorities there cited.

It seems to be agreed, that no dispensation of any interest, except the statutes of mortmain, was of any force, without a clause of non efchant; neither is such clause proper for any thing, it having been made by Act of Parliament, and inserted by W. & M. cfl. 2. cap. 2. That no dispensation by non efchant 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 agreed, that no charter, grant or pardon, granted before 1659, shall be void by this clause, nor by any of other, that but the same shall be & remain of the same force, and no other, as if the void 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 in a statute by the party grieved, nor even a popular action commenced before his pardon, nor a recognition for the peace before it is forfeited. Pcia. 487. 2 Roll. Ab. 178. Co. 199. Kelb. 138.

And whether the King can grant an appeal, except only where it is carried on at his suit, after a non suit; and therefore if a perdon attainted, on an appeal carried on at the suit of the party, get the King's pardon, he must for a false factis against the appellant before the pardon shall be allowed. 2 Hawk. P. C. 392.

The King may not appear on any false factis, he may not pray execution notwithstanding the pardon; but if the riotor return a fire factis, or two nihilis, and the appellant appear not on demand; or if he return the appellant dead, the appellee shall be discharged; but some hold, that in this last case a false factis shall go against the abovenamed party as a part of the commons. 3 H. 3. 23.

But there is no need of any false factis against the lord elector, because the pardon no way tends to re-
the King shall take him to his grace, if it please him."

2 Hil. 316.

But it seems to be settled at this day, agreeably to the ancient Common law, in accordance whereof this statute was made, that in such a case, or where one indicted of homicide 
fe defendendo contests the indictment, if the party be proved to have had and worn the
waste of the cloth, or to have made 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 reference to him, and not intended to make such a pardon 
discoveryary. If the King ever grant, if the pardon save the forfeiture of the flight, for that is not grounded on the homicide, but on the contempt of the law. * Haw. P. C. 383. 381.

If an approver convict all the appellees, whether by battle or verdict, the King ex m[sic]is futuris ought to pardon him as to his wages from the time of the appeal to the time of the conviction. * 2 Ed. 139. 2 Haw. P. C. 209. 2 Hawk's His. P. C. 233.

By the 4 & 5 W. & M. cap. 8. it is enacted, "That if any peron or persons out of prison shall commit any robbery, and afterwards discover two or more who then had or after shall commit any robbery, so as two or more of them shall be convicted, any such discoverer shall be entitled to a pardon for all robberies committed before the discovery, which shall bar an appeal."

And by the 6 & 7 W. & M. cap. 17. it is enacted, "That if any peron or persons out of prison shall be guilty of clipping, forgery, counterfeiting, walking, flinging 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 entitled to a pardon for all his crimes committed before the discovery."

By the 10 & 11 W. c. 23. (which excludes clergy from those who shall in any shop, warehouse or stable, privately steal any goods, &c. of the value of 5s. the such shop, &c. be not broken open, and the no person or persons within, or shall affir, hire or command any person to commit such offence.) It is enacted, "That if any person or persons out of prison shall commit any burglary, house-breaking or felony, in stealing of any horse or houfe, 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, shall be convicted thereof by the party such discoverer that he be entitled 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 him, who shall have his wages as aforesaid, so as he shall 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 apprised, both of the heinousness of the crime, and also how far the party had committed the said crime on a pre- assumption that it was gained from the King by imposition. * Vol. 42. 47. * Cr. 10. 18. 34. 548. 2 Rol. Ab. 188. Dyer 352. pl. 26. * Regm. 13. * Sid. 41. 3 * Dyer. 338.

And upon this ground it seems agreed, that if a man attainted of felony get a pardon, which doth not mention the conviction of the person, it will be inferred at a pre- assumption that it was gained from the King by imposition. * Vol. 42. 47. * Cr. 10. 18. 34. 548. 2 Rol. Ab. 188. Dyer 352. pl. 26. * Regm. 13. * Sid. 41. 3 * Dyer. 338.

It is said, that generally a pardon is even at this day pleading to all felonies, except murder and rape, and piracy; and that the only reason why it may not also be pleaded to murder and rape is, because 13 R. 2. requires an express mention of them; and that the only reason why it is not pleaded to murder and rape is, because 13 R. 2. requires an express mention of them. * Haw. P. C. 383-4. 1 Hal. Hisf. P. C. 466. 2 Hal. Hisf. 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 that makes it, shall be comprised; and if there should be any other person's name writ ed; and the justices, before whom the charter shall be alleged, shall inquire of the fame 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 al
tainder of robbery, pardon the execution, he then, rather than pardon the felony itself, nor any other con-

It is enacted by 2 Ed. 3. cap. 2. that charters of par don of man slaughter shall not be granted but where the man is killed, or whereby there is a man dished another in his own defence, or by misfor-
tune; nor 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 misfortune, or by infants or madmen; and from hence some have disputed the King's power of the word murder, and whether he can be pardoned, &c. be specified in the same charter; and it is to the plain mean
port of 13 Ric. 2. cap. 1. which reciting, that treston, or murder, and rape, had been frequently committed, be
cause pardons had been easily granted in such cases, &e. &c. &c. It is enacted, that no pardon shall be allowed for murder, or for the death of a man by wight, or murder, or for the death of a woman, unless the same murder, &c. be specified in the same charter; and it is to the plain mean
port of 13 Ric. 2. cap. 1. which reciting, that treston, or murder, and rape, had been frequently committed, be
cause pardons had been easily granted in such cases, &c. &c. &c.

It has been formerly often adjudged, that murder might be pardoned under the general description of a treston or murder, &c. which is not allowable in 2 Ed. 3. cap. 2. It is enacted, that no dispen
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" Haw. P. C. 385-6. and several authorities there cited.

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sation by non dantes of or to any pardon shall be allow
paradons a homicide from a wound before the day, whereof the party died not till after; because the stroke being pardoned, the effects of it are consequently pardoned. *Par. 302.* Cal's. cafe. 1 Hale's Hist. P. C. 426. Dy. 9. pl. 65. If a pardoned, that a pardon of all misprisions, trespas, faults, and contempt, will pardon a contempt in making a false return, and a striking in Wymington Hall, baratry, and even a precumine; also it is laid down generally, that it will pardon any crime which is not appealed. 1 Las. 52, 3d. 52d, is indited of piracy, and refusing to plead had judgment of paine fort & dure, and by the general pardon of piracy are excepted, but the judgment of paine & dure is pardoned by the general words of all matters; where. Whether he may be arraigned for the same piracy; but by the better opinion, he may be arraigned. *ibid.*

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**Sections concerning general and other pardons.**

General pardons by statute. *St. de Taille; note conseil.* 4 Ed. 1. b. 4. c. 5. Ordin. Jflf. 3d. Ed. 1. h. 5. cap. 14. ed. 3. h. 1. c. 2. 14 ed. 3. h. 3. 31 id. 3. b. 1. c. 13. 36 Ed. 3. b. 2. 50 Ed. 3. c. 3. R. 0. c. 10. R. 2. d. 2. R. 6. b. 1. c. 13. 6 h. b. 2. c. 3. 21 R. 2. c. 15. H. 4. d. 20. 2 L. 13. h. 4. R. 4. H. 3. 6. 8. h. 5. 8. h. 5. 1. 23 h. 1. 10. 25 H. 8. c. 18. 32 H. 8. c. 19. 35 H. 8. c. 18. 25 Car. 2. c. 2. 29 W. & M. c. 10. 7 Ann. c. 22. 3 Geo. 1. c. 19. 7 Geo. 1. c. 29. 20 Geo. c. 5. *ibid.* 

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Ability to hold office not restored by pardon. 20 Geo. II. c. 57. In 1749. Pardons of murder, &c. shall not be granted, except. *2 Ed. 3. c. 3. 4 Ed. 3. c. 3. 10 Ed. 3. b. 1. c. 2. 14 Ed. 3. b. 1. 13 Pardons pardoned, to find surety for their good behavior. 10 Ed. 3. b. 1. c. 3. Repealed 5 W. & M. c. 13. Where pardon is granted upon a forgery, the forgery shall be recited, 27 Ed. 3. b. 1. c. 2. Pardon to be granted to certain persons attainted in uttermost, declared void, 11 R. 2. c. 1. Shall not be allowed for murder, treason or rape, unless they be specified in the charter, 13 Ric. 2. b. 2. c. 16 R. 2. c. 2. The chamberlain or under chamberlain to indorse on warrant for a pardon for murder, treason or rape, the name of the person at whose suit the pardon is granted, and the penalty of making such facts, 13 R. 2. b. 2. c. Repealed 16 R. 2. c. 6. A penalty on those who procure pardon for an appraiser, if he becomes a thief again, 5 H. 4. c. 2. The general pardon, indemnity and oblivion, 12 Car. 2. c. 11. Persons pardoned of felony may be bound to their good behavior for seven years, 5 W. & M. c. 13. Robbers, 5 & 6 W. & M. c. 8. sect. 7. Burglars, &c. 5 & 6 W. & M. c. 17. sect. 2. Burglars and house-brokers discovering two or more of their accomplices, intitled to pardon, 10 & 11 W. 3. c. 13. sect. 5. The King's pardon not displeased to an impeachment by the Commons, 12 & 13 W. 3. c. 2. sect. 3. For more learning on this subject, see 3 Bac. Abr. tit. Pardon. 

**Parishes.** (mentioned in flat, 22 H. 8.) Were persons that carried about the pope's indulgences, and sold them to any that would buy them. *Cou. Grat. ed. 1727.*

**Parents.** (Parsons) A father or mother; but generally applied to the father. Parents have power over their children by the law of nature, and the Divine law; and by those laws they must educate, maintain and defend their children. *Wood's inq. 63.* The parent or father hath an interest in the profits of the children's labour while they are under age, if they live with, and are maintained by him. But the father hath no interest in the effects real or personal of a child, otherwise than as his guar.
and the canon cannot abrogate such cumbus; and when
closen it is to be figned, and they are to be fown into their
office by the archiepifhops. Cap. 589. Cap. 91.
He may make a depute of his own bread, and ordains,
2 See the communication of the French law, fol. 15, as to the
the canoe cannot fign the scriptural law for
least being a temporal officer. 2 Strange 1128.
Parliament. (Parliament.) is an inhabitant of or
belonging to any parish, bawdily reigned therein. In
Parliaments are compellable to put things in decent order;
but the judgment of the majority is the only rule for the
determination of any cause that is to be done, and a rate
for that purpose is binding; as for moving the com-
munication-table out of the body of the church into the
chancel, or raising it higher, &c. Par. 70. Mile. 1 An.
Parliaments have right to view parish books. 11 Mile.
Parliaments are a body politicke to many purposes; as
to vote at a veltery if they pay foot and land; and they
have a pole right to raise taxes for their own relief, without
the intervention of any inferior court; may make by-laws
to mend the highways, and to make banks to keep out
the fcar and to barring the church, and making a
bridge, &c. or any fuch thing for the public good, and
by the 3 & 4 W. 3. and 7 Ann. to tax and levy poor
rates, and to make and maintain fire-engine, and by
This Parliament, as the French parle, or parque, (le rendez.) Signifies with us a piece of ground
inclosed, and furied with wild beffs of chaff, which a man
may have by preconfeption, or the King’s grant. Crump.
Jour. fol. 148. Manmont in his Fors Law defines it thus: A park is a piece of privilege for wild beffs of
wolves, and also for other wild beffs, that are beffs of
the forreft, and of the chaffe, tam familtonem comedent;
and fuch a park differs from a chaffe or warren, in that it
must be inclosed, and may not be open; for if it do,
that is a good caufe of fceulfing into the hands of the
King, as a thing forfeited, as a free chaffe, if it be not
inclosed; besides the owner cannot have an action again
fuch beffs as in his park, if it be open. See Jaff., Chaff.
de belli, de eure parcum. Spelman’s Glafs. And Hen. 1.
had a park at Wofflchek, wherein were lions, leopards,
camels, &c. brought thither from foreign parts. Straut.
Add. 1117.
Parliaments shall not have the imprisonment of malefactors
in their parks, &c. St. Mart. 20 H. 2. c. 11.
Malefactors in parks and ponds may be punished by
three years imprisonment and ranfom, &c. or outlawed,
St. Wyllm. 3 Ed. 1. c. 20.
Survey to be taken of parks, extensa moruim, 4 Ed. 1.
fl. 17. 4 Ed. 1. fl. 18.
Parks not to be within 200 feet of a highway, or to be
walled, &c. 13 Ed. 1. fl. 2. c. 5.
Malefactors in forefts and parks who will not fand to
the King’s peace, may be killed, St. de Malefactors in
Parks. 22 Ed. 1. fl. 2. extended to enclosed grounds
where the beffs are kept, 3 H. & M. c. 10. fl. 5. and to
beards or game-keepers in the night, 4 & 5 H. & M. c.
23. fl. 4.
Penalty on pulling down the pales of a park, &c.
3 H. & M. c. 10. fl. 5. 6 Ed. 1. c. 5. fl. 10.
Recompence to be made by the township to owners of
beads, destroying their beffs, &c. 6 Ed. 1. c. 10.
6 Ed. 1. c. 13. 9 Ed. 1. c. 13. 16 Ed. 1. c. 13.
Parch., 5 Ed. 1. c. 13.
Pathlets, Is to be quit of including a park, or any
part thereof. Co. 4 Inf. fol. 582.
Doffle Dill, A place where people met to determine their
differences. Cozsh, edit. 1727. See Spelman’s de-
terminations of jut in park.
Parliament. (Parliament.) is deduced from the
French, viz. parlement, to speak, and meet, meet, the
mind; and the wit which governs it, says, Ad
15th. 14th. 13th. 12th. 11th. 10th. 9th. 8th.
17th. 16th. 15th. 14th. 13th. 12th. 11th. 10th. 9th.
8th. 7th. 6th. 5th. 4th. 3rd. 2nd. 1st.
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17th. 16th. 15th. 14th. 13th. 12th. 11th. 10th. 9th.
8th. 7th. 6th. 5th. 4th. 3rd. 2nd. 1st.

In the 35th year, the general court of the whole kingdom was held at Westminster, to which were summoned the Lords Spiritual and Temporal, the barons, the Justices, the sheriff, and the officers of the counties; and likewise representatives of towns, who were chosen by the burgesses of the towns, and appear on the King’s summons; this court met once a year at halfe, and generally twice, about Easter and Michaelmas.

Upon the coming in of William the Conqueror, every person found in arms against him forfeited his whole estate, in which he placed his Normans; and he compelled all thieves, who were not in arms against him, to take out patents of their lands to hold of him; and in order to this, he made a general survey of the whole kingdom, which was called Domesday, and changed the nature of the tenures, which in the Saxon times were allodial, into feudal, to be held of himself by knighthood-service; and by this means the propery of their estates depend on their allegiance to him: And hence it is, that all lands are held to be held immediately or immediately from the Crown. See Highe’s Tenures.

The barons and their lands were anciently created by granting to many knights fees, &c. If the grant consisted of 13, 17, 21 knights fees, the party was compellible to hold tenures, and he that had twenty knights fees, to hold a whole county, as a certain estate, in his right, by time, they held both their honours and estates by the preteripture right of possession; the monks and barons were wont to grant our lands to other vassals, to do certain duties, which depended on the bounty and agreement of the half-grant; and from hence came all the trust in feudal tenure, relief, &c. But thofe, who held immediately from the Crown, were called their tenants in capite, and did not only to the King.

So the title of William the Conqueror erected a new court, called Corta or Aliis Regis, composed of his principal officers of state, to thofe, when any matter of moment was in agitation, as levying a new war, raising an exchequer, &c. They were called mid of the barons, and chief persons were in capite, and they transacted all busines civil and criminal, and also that relating to the revenue, and were the great court-baron of the kingdom; where every thing done therein, was said to be done per commum vigi; it was in the election of the King to summon barons, that he was to be picked to this court, and such attendance being deemed a burden in former days, the barons were seldom called, especially when they refu t that grandeur as to make such a service formidable to the King. See Midd. cap. 1. 3.

In this great assembly or parliament, it seems plain, there was not a king, who looked upon the crown and the revenues of England were not part, and therefore the tenants in ancient seisin, who used to maintain the King’s table, and also those who held by Burgess tenure, as by certain rent, setting out ships in the navy, &c. according to the nature of the tenants, were wont, upon any extraordinai

2. Statutes concerning parliaments.

To all parliaments, &c. men shall come in peace, and without tree and arms. Sta. de Dei, Parl. Ind. 6 ed. 1. 4. 7. 14. 24. 2 ed. 4. 6 ed. 4. 24. 3 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4. 24. 2 ed. 4. 6 ed. 4.
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. 10.

Repeal of the parliament, 23 R. 2. 1 H. 4. c. 3.

Of the parliament held, 9 Ed. 4. by King Henry 4.

Appeals shall not be pursued in parliament, 1 H. 4. c. 14.

For enormous battery of a servant of 2 members, the offender shall be proclaimed, and if he do not render himself to the King's bench, he shall be attain'd and pay double damages, &c. 5 H. 4. c. 6. For aliens 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 when all petition shall attend the election, and the knights elected shall be return'd 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 travel, 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. 6. c. 7.

A parliament summoned by the King's lieutenant, not to be dissolv'd by the King's arrival, 8 H. 8. c. 1.

Electors for counties shall have freeholds of 40l. a year, 8 H. 8. c. 7. Within the county, 10 H. 6. c. 2.

The manner of affilling 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. sect. 3.

Repeal of the parliament of Conventry, for undue elections, 39 H. 6. c. 1.

Proclamations 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 Monmouth one burgess, 27 H. 8. c. 26. sect. 28.


The Royal affidavit by letters patent shall be good, 33 H. 8. c. 24.

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 prisoner in execution is delivered by privilege of parliament, the plaintiff shall have another execution, 1 fec. 1. c. 13. Not to diminish seizure of parliament for making such arrest, ibid. sect. 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 city and county of Durham to send knights and citizens, 25 Car. 2. c. 9.

Members not making the declaration against poverty, to lose their seats, 30 Car. 2. & 3. sect. 8.

The convention at the revolt declared a parliament, 1 W. & M. c. 1. 2 W. & M. c. 1. 1 Lord warden of the cinque ports not to nominate members, 2 W. & M. c. 7.

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. sect. 32. 15 Geo. 2. c. 13. sect. 8.

Officers of excise prohibited to solicit at elections, 5 W. & M. c. 20. sect. 48.

Parliaments to be triennial, 6 W. & M. c. 2. Candidates prohibited to treat or bribe the electors, 7 & 8 W. 3. c. 4. 2 Geo. 2. c. 24.

Persons that shall deliver false and double returns, 7 & 8 W. 3. c. 7. Returns to be entred by the clerk of the crown, 7 & 8 W. 3. c. 7. sect. 5.

For continuing the parliament in case 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. 35.

The treeholders oath, 7 & 8 W. 3. c. 25. sect. 3.

Conveyances for fitching fieldholds, prohibited, 7 & 8 W. 3. c. 25. sect. 7.

Mortgagor or essai qui treuille in possession may vote, 7 & 8 W. 3. c. 25. sect. 7.

Persons ineligible to be elected or to be elected, 7 & 8 W. 3. c. 25. sect. 8.

Persons who refuse the oath, not to vote at elections, 7 & 8 W. 3. c. 27. sect. 9. 6 Ann. c. 23. sect. 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. sect. 150.

Suits may be prosecuted against privileged persons during the recess of the elections, 12 & 13 W. 3. c. 3.

Extended to all courts in Great Britain and Ireland, 11 Geo. 2. c. 24.

Plaintiff's action by privilege of parliament, shall not be barred by statute of limitations, 12 & 13 W. 3. c. 3. sect. 3.

Suits against the King's debtor not stay'd by privilege, 12 & 13 W. 3. c. 3. sect. 4. 11 Geo. 2. c. 24. sect. 4.

Officers of the customs disabled from being members, 12 & 13 W. 3. c. 10. sect. 9.

Officers of the customs prohibited from soliciting votes at elections, 12 & 13 W. 3. c. 10. sect. 91. 9 Ann. c. 11. sect. 49.

Persons having places or pensions, disabled from being members of the house of Commons, 12 & 13 W. 3. c. 9. sect. 3. Repealed, 4 Ann. c. 8.

Officers may be prosecuted for misdemeanors in public trust, notwithstanding privilege of parliament, 2 & 3 Ann. c. 18.

The parliament of Great Britain formed, 5 Ann. c. 8. art. 22.

Particular officers disabled, 6 Ann. c. 7. sect. 25. 15 Geo. 2. c. 27.

Parliament to meet upon the death of the King, and to continue fix months, 4 Ann. c. 8. 6 Ann. c. 7. sect. 4.

Directions for the elections of the 16 peers for Parliament, 6 Ann. c. 23.

Votes to take the oath of abjuration, 6 Ann. c. 23. sect. 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 person qualified to serve as knight of the shire, 9 Ann. c. 5. sect. 2.

Exemptions as to the universities, 9 Ann. c. 5. sect. 3.

33 Geo. 2. c. 2. sect. 3.

Poll officers not to solicit in elections, 9 Ann. c. 10. sect. 44.

Annual returning officers not to be re-elected the next year, 9 Ann. c. 20. sect. 8.

Certain officers not to solicit votes, 10 Ann. c. 19. sect. 138.

Malignant votes for county elections prohibited, 1 Ann. c. 23. 12 Ann. b. 1. c. 5. Extended to town that the counties, 13 Geo. 2. c. 20. Repealed, 19 Geo. 2. c. 28. sect. 2.

Quaker's affirmation admitted, instead of electors' oath, 10 Ann. c. 23. sect. 8.

Regulations for the elections of members in Scotland, 12 Ann. b. 1. c. 6. 7 Geo. 2. c. 10. Provision the
one shall vote but those who are admitted by the free-.

2. Parliaments to have continuances for seven years, 1 Geo. 2, c. 11.

3. Persons having pensions for term of years, disabled from being members of the house of Commons, 1 Geo. 1, c. 53.

4. 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.

5. Legality of votes to be according to the determination of the house of Commons, 2 Geo. 2, c. 34, sect. 4.


7. Penalty on electors taking bribes, 2 Geo. 2, c. 24, sect. 7.

8. County courts not to be adjourned to a Monday, Friday and Saturday, 6 Geo. 2, c. 23. Repealed, 18 Geo. 2, c. 15, sect. 11.

9. Judges in Scotland not to be members of the house of Commons, 7 Geo. 2, c. 16, sect. 6.

10. Troops quartered, to withdraw before an election, 8 Geo. 2, c. 39.

11. Suits may be commenced in the intervals of sessions, against privileged persons, 1 Geo. 2, c. 24, sect. 1.

12. Suits against the King's debtors not to fail, 11 Geo. 2, c. 26, sect. 1.

13. Directions for making up the freeholders in Scotland, 16 Geo. 2, c. 11.


15. The act against bribery, extended to elections of de-.

16. sects in Scotland, 16 Geo. 2, c. 11, sect. 33.

17. Directions for fixing the writs and precepts in Scot-.

18. land, 16 Geo. 2, c. 11, sect. 40.

19. A new freeholders oath appointed, 18 Geo. 2, c. 18.

20. Statutes of jealously extended to proceedings on this act, 8 Geo. 2, c. 18, sect. 15.

21. Alterations of the regulations of freeholders votes in Scotland, 23 and 12 Ann. 11. 1. c. 5.

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.


24. The freeholders oath at elections for cities and towns, which are counties of themselves, 19 Geo. 2, c. 28.

25. Statutes of jealously extended to proceedings on this act, 3 Geo. 2, c. 28, sect. 11.

26. Elections for cities and towns that are counties, regu-

27. lated by contract, 19 Geo. 2, c. 23, sect. 177.

28. Contracts for circulating exchequer bills, not dis-.

29. solved by being members of parliament, 30 Geo. 2, c.

30. sect 167.

31. Copyholders not to vote for knight of the shire, 31.

32. sects 2, c. 14.

33. Payments made to be entered in their qualifications on oath, 33 Geo. 2, c. 20.

34. 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. 5.

35. None to vote as freemen at elections but such as have

36. been admitted to their freedom more than twelve months before election, 3 Geo. 3, c. 15.

37. In what manner persons are to vote in right of an an-

38. nuity or rent-charge, 3 Geo. 3, c. 24.

39. See Peer, Privilege, and 16 Vin. Abp. tit. Parlia-

40. ment de la bouche, 1 A parliament called in Edward the Second's time, to which the barons came.

41. meeting against the two Synods, with coloured bands up-

42. on their sleeves for distinction. Dog. Bar. 2 part.

43. Parliamentul bifoùkam, Was a parliament held in

44. January, 36 H. 6, wherein Edward Earl of March (afterward King) and divers of the nobility were at-

45. tained. But the acts then made were annulled by the next

A man will not pass by parol without deed; but the Lord Ch. J. Pemberton laid, it would be a good thing or Chancery, per Pale’s 1727. 12 Mod. 159. 159. 31. Parsons, (Perfona,) signifies the rector of a church. 1st. Car. 2 B. R. in case of Berris v. Boyer. 2. Car. per and deed, and in case of Heason v. Dunham. A promissory executory on both parts; as if I promise B. 51, if a man promises to pay me, before B. goes, I may receive his bill, and so shall discharge my performance of the 5l. for no debt was yet due, nor any thing executed on either side. 3 Lev. 373. 3 Mod. 1. 1st. 2. C. B. Mayor, et. of Starborough v. Butler. An agreement in writing, in the estate of frauds and perjuries may be discharged by parol. 1 Law. 245.

Pafcon, (Perfona, perfonam,) is sometimes taken to mean a church, and sometimes for the benefit of the Church. 20 Cweli, edit. 1727.

Parsonage, or Rectory, 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 the minister. The grant of such a charge the fame is commuted. Spino, De non tenerrmis Eccles'. Parson importurne, (Perfona importurna,) is he that is in possession of a church, whether a appropriated, or not appropriated. In the New Book of Entrench, perfonas seems to be the patron, or he that hath right to give the benefit, by reason that before the Layton Council had right to the tithe, in respect of his liberality used in the erecting and endowing the church, quasi suffinent parfon ecclesiam; and perfonas importurna, to be he to whom the benefice is given in the patron’s right; for we may read in the Register Judicial, perfonas importurnas, for the rector of a benefice pretentious, and not a proprietary, fol. 404. Car. 1721. A dean and chapter be perfonas importurnes of a benefice appropriated unto them; and sol. 221. expressly flows That perfonas importurna is he that is inducted, and is in possession of a benefice. So that perfonas seems to be termed perfonas importurna, in respect of the possession that he hath of the benefice or rectory, he is an appropriator, by the act of another. 20 Cweli, edit. 1727.

Parson mortall. The rector of a church instituted and inducted for his own life, was called perfonas mortalis and any collegiate or conventual body, to whom the church was for ever appropriated, were called perfonas impropriat.' Cweli, edit. 1727.

Perces finis utili habentur, &c. is an exceptive taken against a fine levied. 3 Cweli, edit. 88. The ca. of Finis.

Participo, The charity so called, by which t is poor are made participes of other mens goods. We rec it in several places in the 2. 22. 2. 312.

Partes, Are those which are named in a deed of fine, as parties to it, as those that levy the fine, and whom the fine is levied: So they that make any decess and they to whom it is made, are called parties to a deed. Cweli, edit. 1727. 24. Fin. Abr. tit. Perp. I. 1. 1727.

Partition, (Paritio,) is a division of land by will, or by custom, among coheirs or parteners, where there are two at least; and this partition made four ways, whereof three are by agreement, if fourth by compulsion. The first partition by agreement is, when they themselves divide the land equally into many parts as they are coheirs, and each to chuse once for a part according to order. The second is, 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 peecheare, they write every part severally in a ditto scroll, and wrapping it up, throw each of them into hat, balfon or such thing, out of which each person draws according to their seniority, and so the last is severally allotted. The fourth partition, which is by compulsion, when one or more of the parcereus, by reason of the refusal of some other, fues out a writ. Partitiones fictae, by force whereas they shall be com pelled to part. In Antiq. where the partition, or division, being from the same person, to divide. In Latin it is called benefici. Partition also may be made by joint-teneurs, of tenants common by assent, by deed, or by writ. 31 H. 8. 1654.

Partitione fictae. (Mentioned in Ba. 21 H. 1. cap. 1.) Is a writ that lies for those who hold lands tenementes.
P A S

P A V

Political Bill. The form of it in England, which
attempts to restrict and to keep certain bills or
petitions from the House of Commons, and
the case of the Petition of Right is a
suitable instance of it. The Petition of
Right was presented to the House of
Commons in 1628, and was granted in
1629. It was a protest against the
practice of the Crown in levying forces
without the consent of Parliament, and
the Petition of Right was framed to
secure the right of Parliament to
approve or disapprove of the King's
levying forces. The Petition of Right
was a significant step in the
development of the constitutional
principle that Parliament has the
right to control the raising of
forces.

1. The Petition of Right was
a protest against the
practice of the Crown in
levying forces without the
consent of Parliament.

2. The Petition of Right
was granted in 1629.

3. The Petition of Right
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12. The Petition of Right
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13. The Petition of Right
was a protest against the
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consent of Parliament.

14. The Petition of Right
was granted in 1629.

15. The Petition of Right
was a significant step in the
development of the constitutional
principle that Parliament has the
right to control the raising of
forces.
For paving Drury-Lane and St. Giles', 3 Geo. 1. c. 22.

For paving, cleaning and lighting the streets of London, &c., 2 Geo. 2. c. 2. 22 Geo. 2. c. 22. 22 Geo. 2. c. 2. 22 Geo. 2. c. 12. sect. 9.

Powers given to the Lord Mayor and Common Council for paving and cleaning the streets and highways in London, 19 Geo. 2. c. 3. 22 & 23 Geo. 2. c. 17.

General powers for paving and cleaning the streets of London, Southwark, &c., 3 & 4 Geo. 3. c. 8.

For paving the streets, Southwark, &c., 2 Geo. 2. c. 17.

For filling up the channel of Fleet-Ditch, 6 Geo. 2.

For paving Oxford-square, 8 Geo. 2. c. 8.

For regulating the watch in St. James’, Westminster, and St. George’s, Hanover-square, 8 Geo. 2. c. 15.

Adorning Limehouse Inn 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 highways in London, 10 Geo. 2. c. 22.

For regulating the watch in Ely rents, 10 Geo. 2. c. 25.

For lighting and watching Spitfields, 11 Geo. 2. c. 35.

For adorning Charter-House Square, 16 Geo. 2. c. 6.

Common council to order lamp-lighting within the city of London, 17 Geo. 2. c. 29. 17 Geo. 2. c. 29.

Cart to be drawn by three horses on the paved streets, notwithstanding 2 & 3 Geo. 3. c. 8. 19 Geo. 2. c. 15.

For lighting and watching the parish of St. John, Staneakwe, 23 Geo. 2. c. 18.

For cleaning and watching St. Martin’s in the Fields, 23 Geo. 2. c. 35.

For lighting and watching Becontree Green parish, 24 Geo. 2. c. 25.

For adorning Goldene Square, 24 Geo. 2. c. 27.

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, 29 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. 60.

Inhabitants to be witnesses, 33 Geo. 2. c. 20. sect. 30. sect. 30.

For paving the streets of Westminster, the parishes of St. Giles in the Fields, St. George the Martyr, &c., explained by 3 Geo. 3. c. 23. and further by 4 Geo. 3. c. 39.

For lighting the streets in the borough of Bemingham, in Warwickshire, 30 Geo. 2. c. 12.

For the aforesaid, See foma pauperis. By the Stat. II Hen. 7. cap. 12, it is enacted in the words following, "Prayen the Commons in this present parliament assembled, that where the King our Sovereign Lord, of his most gracious disposition, willeth and intendeth indifferent justices to be had and ministered according to his Common laws, to be had in his true subjects, as well to the poor as rich, which poor subjects be not of ability, no power to sue according to the laws of this land, for the redress of injuries and wrongs to them daily done, as well concerning their persons and their inheritance as other causes; for remedy whereas 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, wit or writs original and writs of jufdges, according to the nature of their causes, therefore nothing paying to his highness his officers, to send for 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 writ ready to be sealed; and also learned counsel and attorneys for the time being, for writing and taking the said writ or write to be returned, if it be before the King in his bench, the justices there shall affign to the same person or persons counsel learned, by their directions, which shall give their counsel, nothing taking for the same; and likewise the justices shall appoint attorney and attorneys for the same person or persons, and all other officers requisite and necessary to be had for the fee of the said suits to be had and made, which shall do their duties without any reward for their counsel, help and bufinefs for the same; and the said law and order shall be observed and kept of all such suits to be made before the King’s justice of his Common Place and Barons of all other justices in the court of record where any such suit shall be." Before a person is admitted to sue in forma pauperis, 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 annex to his petition, that he is not worth 5l. all his debts paid, except wearing apparel, and his right to the matter in question. Lit. Reg. 633. On motion to dispauper one who was in forma pauperis, because he had a living of 42l. per annum; Turton and Guild justices, were against it, because he wou’d be in debt more than it was worth; but Htit Ch. J. distinguished his case from the others, for his being insolvent, and his estate being mortgaged, is no reason, it is enough that he be considered a pauper in full possession. 2 Saith. 507. A perfon admitted to sue in forma pauperis, can onl"
P A Y

nit poor subjects to commence actions for the recovery of their right; and for that end and purpose it shall be

awful for the judges of such courts to align counsel
called in the law, and appoint an attorney and clerk of
such court to advise every person of any legal defence that
such person can make against such action or information;
which said counsel, attorney and clerk so affiliated and
appointed, is and are hereby required to give his and their
dignity and assistance to such person, and to do their du-

bles, without fee or reward.

It is said, that one ought to be admitted to sue in
forma pauperis in an action on the caufe for words. 

2 Peth 633. per Wild.

Alfo it is said, that a person who sues in forma pauper-
ought not to have a new trial granted him; because
having had once the benefit of the King's justice he ought
not to have. 

1 Mad. 268. per North.

It is said, that if a plaintiff should not be admitted to

remove caufes out of inferior courts, but ought to fa-

tisfy themselves with the jurifdiction within which their

plaints properly lie. 

1 Mad. 358. per North.

By the orders of the courts, if the party admitted to

sue in forma pauperis give any fee or reward to his coun-

del or attorney, or make any contract or agreement with

them, he shall from thenceforth be difpaupered, and not

afterwards admitted again in that fuit to prosecute in

forma pauperis.

Ord. Cur. 94.

Alfo it is said, that it shall not be made appear to the court, that any

person prosecuting in forma pauperis hath hold or contrac-

ted any contract or agreement with the defendant, which

in his opinion, could be from thenceforth truly difqualified the court.

Ord. Cur. 95.

It is said, that if a pauper gives notice of trial, and does not proceed, he shall be difpaupered. 

1 Salck. 506.

In the statute 23 Hm. 8. c. 15. there is a provifion, that whoever naturalizes in forma pauperis shall not pay
calls, but fhalluffer fuch other punishment as the
dige of the court fhall think fit.

But notwithstanding this statute, if he be difpaupered,

nonuifed, the usual praefee is to tax the cofls, and

non-payment to order him to be whipped. 

1 Sel. 2. Salck. 506. Stile 356.

A. brought a bill in forma pauperis, to which the
defendant put in a plea and demurrer, which were both
reruled; and it was infifted upon, that he fhould not

cover the bills, being at none; but my Lord Somers, after long

bate and inquiry of all the ancient counsel and clerks,

affirmed, that whoever proceeds in forma pauperis fhall not pay
calls, but fhall suffer fuch other punishment as the
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Peace. (Par.) In the general signification is opposite to war or strife: But particularly with us it intenders a quiet and harmless behaviour toward the King and his people. Lamb, Eirenarch. lib. i. 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 justice of peace, he shall be secured by good bond, which is called binding to the peace. Lamb. Eiren. lib. 2. cap. 2. pag. 77. Cnap. Juef, of Peace, fol. 118. and 120. And of the frank-pledge and confederacy of the peace. Time of peace is when the courts of justice are open, and the judges and ministers of the same may lawfully proceed men from wrong and violence, and administer justice to the. Bae. Ed. fol. 99.

Breakers of the peace to be imprisoned, and to find sureties, &c. 2. Ed. 3. c. 6. 32. 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.

Recognizances for keeping the peace to be certified to the quarter-sessions, 3 H. 7. c. 1.

The Church 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.

Refrained from granting Cperlamentul, unless the process is granted in the manner required by the statute, 21 Jac. c. 8. f. 8.

To punish insufficient sureties. 21 Jac. c. 1. 8. sect. 5. See Surety.

Peace-officers. Actions against peace-officers made local. 21 Jac. c. 1. 12.

Peace of God and the church, (Par. Dei & Ecclef.) Was anciently used for that real and effeétual union which the King's justice has for the peace and quiet of the land, and for the trouble and loss of law between the terms. Tempus dictus cultu divino adhibetur, quaque appellation omnes dies dominici, fidea & vigilia conferunt. Spelman. See Tradition.

Peace of the King, (Par. Regii, mentioned in Stat. 6 R. 2. Stat. 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 Virtue of the King's peace. This point of policy fcenth to have been borrowcd by us from the Teutonic, which in the second book of the Poets, cap. 53. intided, De pace tenenda, &c. Hisman prover. Of this Hovanet fetth down divers branches Par. par., fayum Amphil. in H. 2. fol. 123. There is a peace of the Church, (Par. eccle) for which see Stintury. And the Peace of the King's highways, to be free from all annoyances and molestations. See Watling-street. The peace of the plough, whereby the plough and plough-cattle are secured from durtesses; for which see F. N. B. fol. 90. So fairs may be had to be harmless, because no man in them may be troubled for any debt elsewhere contracted. Cassell, edit. 1727.

Pears, May be imported or exported, duty-free, 6 Geo. 2. c. 7.

Pearl-staff. To what duties liable, 10 & 11 Will. 3. c. 21. sect. 30.

Pearl-staffes, To what duties liable, 22 Car. 2. c. 13. sect. 7.

Peria, A piece, or small parcel of ground. Parocah. disting. pag. 240.

Pears. See Fruit.

Peace. See Coun.

Pelican, 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 shoulder, as a sign of his profession. 'Tis borne by the high-priest of the new law, as a sign of the greatest virtue. See gratia & ratissim pfrifceri; 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 Pelitera. But all agree that it is the richest part of that garment, embroidered with gold, and adorned with precious stones. Cassell, edit. 1727.

Peaceful. (Mentioned in Stat. 14 Car. 3. cap. 7.) Armour for the breast, a breast-plate, derived from pelis, a breast.

Peculiar, (Fr. particular, private.) Signifies a particular parish or church, that hath jurisdiction within itself, for prose of will, &c. exempt from the ordains, and the king's courts. The king's chapel is a Royal peculiar, exempt from all spiritual jurisdiction, and referred to the visitation and immediate government of the King himself, who is supreme ordain. It is an ancient privilege of the see of Canterbury, that wherever any man or adowmen do belong to it, they forthwith become exempt from the ordinary, and are reputed peculiars. Cassell, edit. 1727.

The court of peculiars is that which deals in certain parishes, lying in the several dioceses, which parishes are exempt from the jurisdiction of the bishops of those dioceses, and are peculiarly belonging to the archbishop of Canterbury, within whose province there are 57 such peculiar, or, so called through any jurisdiction belonging to some certain parishes, the inhabitants whereof are exempt sometimes from the archdeacon's, and sometimes from the bishop's jurisdiction. Gadsb. Rep. 119 cap. 11. f. 16. See 16 Vin. Abr. tit. Peculiars.

Permit; Properly money, but was anciently used to cattle, and sometimes for other goods as well as money twenty shillings, and were liable, for the breach of it, to a fine of forty shillings; which, on the payment of fine, was exempt from the jurisdiction of the church. See Certain peculiarity, &c.

Permitia ecclesiastica, Was anciently used for the flat of the church. See Tithes. See the Archbishop's Animals, an Sched. Tithes.

Permitia fuiscula, (L. Canari, fol. 102.) W. money anciently paid to the priest at the opening of grave for the good and behoof of the deceased soul. To the Saxon called Sunfixed, Sunflecct, and anima functela. Spel. de Concil. T. 1. 1. 517.

Peg coherence. (Pedi. Signifies money given for ti cloth, a coat, or piece of tapestry laid on the ground to tread on for greater heat and ease money. Cassell, edit. 1727.

Peg's abriUio, Cutting off the foot was a peculiarity formerly inflicted here as appears by the laws, and by leges, and by the institution of authors. viz. Interdictum non quid accelerat vel superfusum pro aliqua culpa, sed emtori sit, a tolerandi pede vel tici, vel manu. Leg. Will. cap. 7. So in Gal/plus, pag 856. Sub pedes pretenditio sine juri pedes, lib. 1. c. 38. Blafton, lib. 3. cap. 32. Man. 1 tom. pag. 106.

Peking, Foot-soldiers. Simon of Durham, a 1085.

Peculiar. See Haucker.

Pecur, or Deer. (Par. Dei, par, furum, quod a feri solut.) Is a forrester made against the force of a fer, or great rivers, for the better secutor of fome or for the benefit of their houses, or for the benefit of their houses. So is the peer of Deer informed in H. 3. cap. 2. and 17 Geo. 1. cur. 2. The haven and peer of Great Yarmouth, mentioned in Car. 2. cap. 2.

Pecunia, A duty or imposition f maintenance of feet: Also the dignity of the lords or peers of the realm.

Peers. (Par.) Signify in our Common law, the titles or dignities impanelled in an inquest upon any man, for an inciting or creating him of any offence, for which is called in question; and the reason thereof is, because the course and custom of our nation is to try every man in such a case by his equals, or peers. Whall. 1. cap. 50. So Kitchin fuch H. f. 70. These words, Peers to it, in this word, and in this sense, is not in use with us only, but with other nation
Peers of the realm. (Pare regis, procedunt.) Are the peers a body of their own, and lords of parliament, who are divided into Dukes, Marquises, Earls, Viscounts, and Barons: And the reason why they are called peers, is for that notwithstanding there is a distinction of dignities in your nobility, yet in all publick actions they are equal: 1 in their votes of parliament, and in passing upon the motions of the people. S. P. C. B. 3. And this appellation seems to be borrowed from France, and from those peers which Charlemain instituted in that kingdom, whom you may read Vincent. Lupus in Magn. Familiar, lib. 1. cap. Pare Franchise. And tho' we have arrogated the appellation, and applied it with some reason to all lords of parliament, yet we have no set number, as our nobles may be more or less, as the King pleareth.

Gowell, edit. 1727. See Nobility.

1. Of the privilege of peers: and proceedings at law and in equity against them.

2. In what cases peers are to be fiscons, and for what degraded.

3. Of the trial of peers, and the order and process of trial.

1. Of the privilege of peers: and proceedings at law and equity against them.

A bill of Middlesex was issued out of B. R. by an attorney of the court against the Countess of H., which was discharged by special detainers without pleading; because appeared by the record, that she was a peeress, and the conveyance was committed for being oust the process. Vent. 58. Trin. 28 Car. 2. Ann.

Vowees and peers have to the privilege of peers not to be arrested: but as to privilege of parliament, it was terminated both ways in 1756. See 2 Chanc. Cases 224. and

in ejectment a special verdict was found on a trial at t, and thereafter judgment for the defendant, and costs fixed: and after affidavit of the demand of the costs, a warrant was made for an attachment against the Dutchess, where he, Duke being dead, she being one of theเลิฟ, for non-payment of costs; and it was alleged, that tho' the writ did not grant it, the defendant would be remedied; tho' in other cases a diismiss suits against peers, yet this was not permitted to go out an attachment. But the court refused to grant an attachment against the queen of the Dutchess, but ordered her to be served by an attachment, as to her goods and chattels, should be issued; which rule was afterwards made absolute, op. of Pract. in C. B. 7. 8. Hill. 12 Ann. 1713. by the decision of the Duke and Dutchess of Hamilton.

A peer, or lord of parliament, cannot be an approver; nor it is against Magna Charta for him to pray a coroner. Inf. 119. cap. 56. 2 Hawk. Pl. C. 205. cap. 24. 3.

In case of goods of a peer taken on a foreign attachement, and removal of the cause into C. B. he must find bail, and the bail shall be liable to the condemnation. And for execution on a statute flave, merchant, on the hat of Atten Burall, or on the hat of 23 H. 8. the only of a baron shall be taken in execution; for these statutes such pensions were not exempted. 2 L. 173. 1209. Trin. 6. 29 Eliz. C. B. Harley v. Lord Say. It was held, that a nobleman shall be bound with his all in a recognizance to render his body; and that upon his hat, of 13 Ed. 1. if he hath not goods or lands, his body shall be taken in execution for the sum in such case of each creditor. 4 L. 6. 29 Eliz. in C. B. Ann.

If a bill in Chancery be exhibited against a peer, the ourie is first for my Lord Keeper to write a letter to him; and if he doth not answer, then a facultate: then an order to swear cause why a journallation should not go to.

and if he fill flands out, then a journallation. Because there can be no process of contempt against his person.


If during the time of privilege, you want to proceed immediately against a privileged person, you must either apply by your privilege to the court of King's Bench; or if he be a man of honour, &c. he will not refuse; or you may petition the house where he sits, that he may do so, and then he will not refuse it; or if he does, the house, if it see cause, will order him to waive his privilege. Cert. Chan. 459. cap. 18.

Note: a waiver of privilege be of his own generosity, 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 cafe, will not be sufficient. Cert. Conc. 499. cap. 18.

It is said, if a truftee be made a defendant here, he shall not have privilege, though he be a member of parliament. Quere. Cert. Conc. 499. cap. 18.

"Diffringes is the first process against a peer on an information for an intrusion on the King's lands; or for a trover and conversion of the King's goods. 2 Hawk. Pl. C. 204. cap. 27. fol. 12. cit. Co. Ent. 387.

2. In what cases peers are to be journallated, and for what degraded.

In the pleas of parliament, 18 Ed. 1. between the Earl of Gloucester and Earl of Hereford, John de Hoprising a baron, upon long debate, was 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, 10 Car. in B. R. by the court where the Lord Dorset's testimony was requisite. See D. 314. h. marg. pl. 68.

A bill was against a peeress to discover debts, the answers on her honour and journallations dealt. She shall produce them only upon her honour, and not on oath. Ch. Prem. 91. Pafes, 1699. Duke of Hamilton v. Lady 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; or per baronet Lord Keeper. 2 Saik. 513. in Conc. Sir Thomas Meri v. Lord Sturtan.

George Neville, Duke of Bedford, was degraded by force of an act of parliament, 16 June 17 Ed. 4. which act, reciting the making of the said Sir George Duke, doth express the cause of his degradation, in these words, &c. And forasmuch as it is openly known, that the said George hath not, nor by inheritance may have any livelihood to support the said name, estate and dignity, or any name of estate; and oftentimes it is seen, that when any lord is called to high estate, and hath not convenient livelihood to support the said name, dignity, it induceth great poverty and indigence, and caueth oftentimes great extortion, emasculation 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 spirital and temporal, and by the common in this present parliament assembled, and by the authority of the fame, ordaineth, establisheth and establisheth. 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 livelihood 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 abovementioned, among the rest to the general words of the writ, to take away such in-convenience. 12 Rep. 106, 107. in the Earl of Stharmau's cafe.
3. Of the trial of peers, and the cause and premises of
trial.

All the barons of parliament shall be tried for treason, felony, misprision, or as necessary, at the suit of the King
by their peers. By Magna Charta 9 H. 3. 39. Non ju-
per eum timen, &c. nisi per legale judicium parum jus-
sum. 2 Inst. 49. 9 Co. 30. b. Sta. 153, 153. So all
the nobility, who are peers of parliament. So by the
Common law, which is now affirmed by the stat.
20 H. 6. cap. 9. All duchesses, countesses and baro-

cesses, who are noble by descent, creation or marriage,
2 Inst. 50. And marchionesses and viscountesses, &c.
though not named by the flat. 20 H. 6. 9. 2 Inst. 50.
S. T. 2. 50. All who are dukes, duchesses, viscountes
and peers cannot waive his trial by his peers. Kel. 51, in
marg. 661. 1 Tr. 265. 2 Ro. 94.

But the nobles of another kingdom, or who are not
barons of our parliament, shall not be tried by the peers
of parliament. By the Common law, confirmed by
parliament, 4 Ed. 3. 2 Inst. 50. 7 Co. 15, 16. Gal-
vens. 3 Inst. 30. 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 bi-
ishop; for they are not peers inertiible. Seld. J. P.
If he be accused in parliament, 4 Inst. 3 vol. 2. p.
1541. 3 Inst. 50. For they make proxies alter peer, and
make up their debt. 3 Inst. 50. If a woman be 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 up-
on the trial of any peers or peeresses, 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 sum-
nomed and appearing shall vote in the trial, first taking
the oaths of allegiance and supremacy required by 1 W. & M.
and suffixing and repeating the Teift enjoined by 30
Geo. 1. c. 2.

Sect. 11. Provided, That this act shall not extend to
impeachments or other proceedings in parliament.

Sect. 12. Nor to the treasons of counterfeiting the
coins, the Great seal, Privy seal, Sign manual or Privy
seal.

By 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-
try; for tho' the peers are the proper paries 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 2 Inst. 50 is not by them, but by the inhabitants
of those counties where the facts arise, since such peers liv-
ing 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 persons of the best qual-
ity; therefore a knight is necesseary to be summoned in
case where a peer is party. G. Hist. C. B. 78. 79
cap. 8.

It has been adjudged, that if a peer on an arrangement
before the lords refuse to put himself on his peers, he
shall be dealt with as one that bands himself; 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 perrage, be indicted and arraigned as a com-
moner, and plead Not guilty, and put himself upon his
county, it has been adjudged, that he cannot afterwards
fie the trial to be a peer, and pray a trial by his peers. 2
Inst. P. C. 1554. f. 44. f. 19.

The order and process of this trial appears anns 1 H.
4. 1. and anno 13 H. 8. 17. 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 patent shall
make out court and have him to be the High Steward of
England for the day of the arraignment, who, before
the day shall make precept to his foregates at arms, (who

is appointed to have him during the time of his commis-

sion,) to caufe to come before him twenty or eighteen
members of parliament at the same day; and after at the
time when the Senate shall be under the hands of the
queen by the arraignment of the prisoner, and has caused
him to read his commission, the said Steward shall return
the said process, and the lords shall be theretoph demanded
and when they have appeared, and are seated in their
places, the constable of the Tower shall be demanded to
be the next person of the court, who shall be conducted
by him to the bar, and then the said High Steward shall
throw to the prisoner the caufe for which the King
has assembled there the lords and him, and command him
answer without any delay, and thereupon shall cause the
clerk of the crown to read the indictment to him, and
then the clerk of the crown shall be demanded to see if he be guilty or not, to which, after
he has answered Not guilty, the clerk shall demand
further of him, how he will be tried? To which he may
pay, by God and his peers; and immediately upon the
the fequesters and King's attorney shall give evidence
against him; to which, when the prisoner has answer
the said confable shall be commanded to retire with the
said prisoner from the bar, and some place for the time
the lords ferenely shall take in the said court together
and therupon the lords shall rise from their places,
confest together, and that which they did do upon
their honour without any oath to be administered to
them, or by any of them, or the greater part of them
agreed they shall do, and to the place where they have
felves; and then the High Steward shall demand of the
younger lord by himself, If he who is arraigned be guil
or not? and so of him who is next to the youngest, at
the seat of the senium, till he has perused all; and en
of the lords shall answer by himself; and then the
Steward shall send for the said prisoner, who shall
be brought back to the bar, to whom the said Steward
shall rehearse the verdict, and give judgment according
Staunf. Pl. C. 152. lit. 3. cap. 1. See 16 Fin. Attr. 2

Peers.

Peers. A dignity may be obtained by marriage
As, if a duke, marquis, earl, Ct. marries, the
shall be noble for her life. Co. Lit. 16. b. 2 Inst. 50.
And if a woman marries a duke, who dies, and afterwards
marries a baron; yet he continues a duchess. Co. Lit.
16. b. 2 Inst. 50. If a duke, earl, who has a
dignity in fee, has not a son, but several daughters; it
may be questioned whether the dignity on him who marries
the daughters, as he says. 12 Co. 111. It is a
man, noble by marriage, afterwards takes a husband
under the degree of nobility, the shall lose her nobility.
One wife of a woman, noble by descent, takes a husband
who is noble by title, and is3 Inst. 50 per Birth. Obit. 8
Or if a Queen Dowager takes a husband, and is
so by the subsequent marriage shall not lose her
her dignity. 2 Inst. 50. Yet if a woman, noble or
decease, marries to an inferior degree of nobility, as
the daughter of a duke marries a baron, the shall
preceude the marriage, as a baroness. Obit. 92.

Pica, a plate of plate, in France

Pica, a round weight, it was once used in
France. Covell, edid. 1727.

Piae, a peel, a mile, a fort. The citadel or
call in the life of Man, was by this name granted
to John Stanley. Pat. 7 H. 4. m. 18.

Piche and Pihre, (Pelfre) In time of war the
Earl Marsali is to have all preys and boates, all the good
beasts, except sheep, hogs and goats; which is called
P. Covell, edid. 1727.

Pilfigre, (Red. Parl. 11 H. 4.) The cuffin or
deo paid for skins, plains or leather.

Piffuria, a pitch, Tonisa et indiculum leatum. Slat. Pithrea,
or fur-pitch, or fur-pipe. Slat. Petitpeeu. (Pat. 15 Edw. 3. pg. 2. m. 45.)
leatherer or Skinner.

Pillete, (Fr. Petit) The bull of the foot. See C.
Inf. per. 4. fol. 308.

Piel-book. Is the word pulled off the skin, or piel
draw line. 8 H. 6. cap. 22. Prentice
Penitence, (&c.) see Pardon.

Penitencenotes. See Notes.

Penitent, A person, or enigma-bearer. Cowell, ed. 1727.

Penultimate. See Pott.

Penury, see Debt.

Penury-plaint. See Debt.

Penury-weight. As every round contained twelve ounces, each ounce was formerly divided into twenty parts, called penny-weightst and through the penny-weight be altered, yet the denomination still continues. Every penny-weight is sub-divided into twenty-four grains. Cowell, ed. 1727.

Penion, (mentioned in fl. 11 Ric. cap. 1.) Is a standard, banner, or enigma, carried in war. Cowell, ed. 1727.

Penia fals, Cæsæ, &c. A way of till, or cheeck, containing 250 pounds. Cowell, ed. 1727.

Penit, Ad penitum. The ancient way of paying into the Exchequer as much money for a pound flérling, as weighed twelve ounces Troy. Payment of a pound de numera, imported just twenty flérlings; or ad julio twenty flérlings and fix-pence; and ad penitum, imported the full weight of twelve ounces.

Penit (Fr. Pénit.) An allowance made to any one without an equivalent. See Bofcb. And to receive pension from a foreign prince is not forbidden by the law of our King, has been held to be criminal, because it may involve a man to prefer the interest of such foreign prince to that of his own country. 1 Hen. P. C. 58. Six-pence in the pound to be deducted of all salaries, 7 Geo. fl. 1 c. 27. &c. 12 Geo. fl. 2 c. 1. What pensions are chargeable with the land-tax, and what exemples, 30 Geo. 2 c. 2. &c. 30. 94, 95, 96, 97. See Parliaments.

Penitents of churches. Are certain sums of money paid to clergymen in lieu of tithes. And some churches have settled on them annuities, pensions, &c. payable by the church, or by other churches, if a certain sum be due by virtue of some decree made by an ecclesiastical judge upon a controversy for tithes, by which the tithes have been decreed to be received 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 secular clergy; and if the same have been finally paid for twenty years, then it may be claimed by the ordinary, and be recovered in the spiritual court; or a parson may prosecute a 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. 1 N. B. 51. Hardr. 230. Vintr. 210. 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 parson to a clerk, he cannot; as if one grant an annuity to a parson, he must sue for it in the temporal courts. Cfr. Edict. 675. See Ecclesiastical courts.

Penion of the tims of courts. That which in the two Temples is called a parliament, and in Lincoln's Inn a council, is in Grey's Inn termed a penion; that is, an annual payment of a certain number of pennyweights, to the members of the society, to consult about the affairs of the house. And in the inns of court, pensions are certain annual payments of each member to the house. Cowell, ed. 1727.

Penitentia, (Penitentiar) are a band of gentlemen so called, that attend as a guard upon the King's persons: They were instituted in 1559, and have an allowance of fifty pounds a year, to maintain themselves and two horses for the King's service. See Steevs's Annals 973.

Penion-Writ. When a penion-writ is once issued, none else thereby in any inns of court, shall be discharged or permitted to come into commons, till all duties be paid. Order in Grey's Inn, wherein it seem to be a preceptual order against such of the society as are in arrear for penions and other duties. Cowell, ed. 1727.

Penitentials.
PENTECOSTS. (Pentecosts.) Were certain pius oblations made at the feast of Pentecost, by patriarchs to their patriarch-priest, and lamenators by inferior churches or parishes, to the principal mother church. Which oblations were also called Whiffin furthings, and were divided into four parts, one to the patriarch-priest, a second to the poor, a third for repair of the church, and a fourth to the bills of the Church of Pentecost and Pentecostals. See Whiffin in Pentecostals.

PELL (Saxon Pealg.) Was our ancient current silver.

PER Ambulatio. A term in the Ecclesiastical law and signifies a presentation granted to a clerk, that being deputed in a capacity for a benefice, or other ecclesiastical function, is de jure admitted to it; and it has the appellation from the words, which make the faculty as of factual to the party dispensed with, as if he had been actually capable of the thing, for which he is dispensed with at the time of his admission. 25 H. 8. cap. 21.

PERMISSIBLE. To stay, remain, or abide in a place

PETITION. Petition, (Petitione) A writ that is issued out by two or more lords of manors lying near one another, and confenting to have their bounds f Salvus. It is directed to the sheriff, commanding him to make perambulation, and to set down their certain limits. F. N. B. fol. 133. See Nationallity, &c., and Reg. Oris. fol. 157.

PETTY, for Peritia, A peric. Et unam acram prati

PETRIFACATION. The making of a stone, or place in a river made up with banks, damns, &c. for the better convenience of preferring and taking of fish: of which kind there were several artificially contrived in moist waters and streams. Couth. edit. 1777.

PETTI (Peritia.) Is used with us for a rod or pole of fixeen foot and a half in length, whereof forty in length, and four in breadth make an acre of ground. Cress. Far. fol. 221. Yet by custom of the country it may be longer, as he there faith; and several counties differ herein, for in Staffordshire it is twenty-four foot, in the forest of Sherwood twenty-five. In Herefordshire a peric of walking is fixteen foot and a half: A peric of digging thirty-one foot: in the forest of Caer twenty-five: In the forest of Clarendon twenty, &c. Couth, edit. 1727.

PETTIFUT. See Entry.

PETRIFICATION, (Mentioned in Leg. H. 1. cap. 29.) Signifies the dregs of the people, viz. men of no substance.


PETRIFICATION, (Perpetuum, from the verb pericem, to cut off,)Joined with a substantive, as action or exception, signifies a final and determinate act, without hope of renewing or altering. So Firbercher calleth a peremptory action. Nat. Zvrot. fol. 35, 38, 104, 128, and mensuit peremptory, I dem. fol. 5. 11. A preceptual exception. Bredon. lib. 4. cap. 20. Smidc de Rep. Angil. lib. 2. cap. 13. calleth that a peremptory exception, which abates the cause, the former plea which was overruled, being only in abatement of the writ: But it is otherwise where such an issue and examiner is in bar of the action; for there the merits of the cause are put upon it. Trin. 24. Car. 4. 5. R. 2. Litt. Att. 190. A preemptory day is when a business is by a rule of court to be spoke to at a precise day; but if it cannot be spoke unto then, by reason of other business, the court at the praser of the party concerned will dispense with the no speaking to the same term, and give a farther day without prejudice to him; and this it called the pating off of: preceptory, and is used to be moved for by counsel at the rising of the court, when it is granted of course. 2 Litt. ibid.

PERPETUAL. Petition, (Petitio.) A demand, or a cause set against one; requiring an answer. E. R. 8. 8. 67. 3. 223.

PERPETUAL. The term, (Petitiones perpetuas) is de jure admitted to it; and it has the appellation from the words, which make the faculty as of factual to the party dispensed with, as if he had been actually capable of the thing, for which he is dispensed with at the time of his admission. 25 H. 8. cap. 21.

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such a court as a record or not, or whether it be a court of Common law, or a court of equity, or Civil law, or whether the oath be taken in the face of the court, or out of it, before perons authorized to examine a matter depending in it, as before the sheriff of the county, to hold plea of land, or to examine, hear or determine any matters, or any matters concerning the title, right or interest of any lands or tenements or hereditaments, or in any of the King’s courts of record, or in any act, view of frank-pledge or law, ancient demesne court, hundred court, court baron, or in any public courts of the fl annary in the counties of Devon or Cornwall, or shall unlawfully or corruptly procure or suborn any witnesses or witneflers, who shall be sworn to testify in perpetuum rei memoriam, shall for such offence, being thereof lawfully convicted or attainted, forfeit the sum of 40 l. And if any such offender, being convicted or attainted, shall not have any goods or chattels, lands or tenements, or any satisfaction to the value of 40 l., then every such perfon shall suffer imprisonment by the space of one half year, without bail or mainprize, and stand upon the pillory the space of one whole hour in some market town next adjoining to the place where the offence was committed, in open market there, or in the market town where the offence was committed.

And Sec. 5. It is further enacted, "That no perfon, being convicted or attainted, shall from henceforth be received as a witnes in any court of record in any of the King’s dominations of England or Wales or the marches of the same, till such judgment against him be received by the party aggrieved, and the upon every such reversal the party aggrieved shall recover damages against the party who did procure the said judgment to be reversed to be first "given."

And Sec. 6. It is further enacted, "That if any perfon or perons shall either by the forbiddan, unlawful proceeding, after perjury, or swear, contrary to the oath given, or swear, or perjury, or to any other matter or action, or by force of perjury, or by force committed any manner of willful perjury by him or their deposition in any of the courts before-mentioned, or being examined in perpetuum rei memoriam, that then every such offender being duly convicted or attainted shall forfeit 40 l. and have imprisonment by the space of nine months, without bail or mainprize, and the oath of such offender shall not from thenceforth be received in any court of record in England or Wales, until such judgment be reversed, and on such reversal the party aggrieved shall recover damages in the manner before-mentioned.

And Sec. 7. It is further enacted, "That if such offender shall not have goods or chattels to the value of 40 l. that then such person shall be sent on the pillory in some market place within the shire, city or borough where the offence shall be committed, by the sheriff or his messenger, if it shall fortune to be within any city or town corporate, and if it happen to be within any city or town corporate, then by the head officer of such city, or where he shall have both ears nailed."

And Sec. 8. and 9. It is further enacted, "That one moiety of the said forfeitures shall be to the King, and the other moiety to such person as shall be grievances, hindered or molested in any manner by the said judgment, and the same shall be paid by such witness or witnesses, so often as he or she shall be required to do so.

And Sec. 10. Provided, if the said judgment shall not restrain the authority of any judge having absolute power to punish perjury before the making thereof, but that every such judge may proceed in the punishment of all offences punishable before the making of the said judgment,

VOL. II. N°. 112. 2. How restrained and justified by statute.

By the 45th. 4. e. 1. it is enacted, "That whatsoever shall unlawfully and corruptly procure any witnesses or witneflers by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any willful and corrupt perjury in any matter or cause whatsoever depending in suit or variance by any act, &C., bill, complaint or information in any wise concerning any lands, tenements or hereditaments, or goods, chattels, 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 persons shall have authority by virtue of the King’s commission, patent or warrant, to hold plea of land, or to examine, hear or determine any matters or causes, or any matters concerning the title, right or interest of any lands or tenements or hereditaments, or in any of the King’s courts of record, or in any act, view of frank-pledge or law, ancient demesne court, hundred court, court baron, or in any public courts of the annmary in the counties of Devon or Cornwall, shall unlawfully or corruptly procure or suborn any witnesses or witneflers, who shall be sworn to testify in perpetuum rei memoriam, shall for such offence, being thereof lawfully convicted or attainted, forfeit the sum of 40 l. And if any such offender, being convicted or attainted, shall not have any goods or chattels, lands or tenements, or any satisfaction to the value of 40 l., then every such perfon shall suffer imprisonment by the space of one half year, without bail or mainprize, and stand upon the pillory the space of one whole hour in some market town next adjoining to the place where the offence was committed, in open market there, or in the market town where the offence was committed.

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And Sec. 10. Provided, if the said judgment shall not restrain the authority of any judge having absolute power to punish perjury before the making thereof, but that every such judge may proceed in the punishment of all offences punishable before the making of the said judgment,
in such case as they might have done and used to do to all purposes, so that they fet not on the offender left punishment than is contained in the said act.'

"That every indictment or acton on this statute must exactly pursue the words of it; and therefore if it allege, that the defendant deposed such a matter falsly & deceitfully, or falsly & corruptly, or falsly & voluntarily, without laying, the words & corruptly, it is not good, though it concluded, that it be voluntary & corruptly commissit perjurin contra formam statuit, &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 saids per se farsa evangeli disputet. Cro. Eliz. 147. Hel. 112. 42 Leon. 241. 1 Show. 198. Cro. Eliz. 105.

"But there is no need to shew, whether the party took the said oath through the subornation of another, or of his own act, the words of the statute are, "If perpens by subornation, &c., or their own act, &c., shall commit wilful perjury" for there being no medium between the branches of the statute, the party, by the party being put into the steads, and to express no more than the law would have implied, and therefore operate nothing. 3 Bdfl. 147.

"It hath been adjudged, that a man cannot be guilty of perjury within this statute, in any case wherein he may rob the party of the subornation of perjury, depending on 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 effect the lesser crime, than to subornation of perjury, which they seem to effect the greater; and therefore since the clause concerning subornation of perjury mentions of perjuries depending on it, by writ, bill, plaint or information, concerning hereditaments, good 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 restriction: Also since the clause concerning subornation of perjury relates only to perjury by witnesses, that concerning perjury shall extend only to the like perjury; and therefore not to perjury in an answer in Chancery; or in swearing the peace against a man; or in any pretention by a homager in a court baron; or in a wager of law, but by giving before commissioners of inquiry of 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 fact before the court, and either of the parties in variance be grieved, hindered or molested, 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 opinion, that a false oath before the sheriff on a writ of inquiry of damages is within the statute. 5 Co. 99. Cro. Jef. 120. 3 Hil. 164. 2 Leon. 201. 100. 120. Cro. Eliz. 145. 2 Kell. Abr. 77."

"It hath been held, that the clause which gives an action to the party injured, that no false oath is within the statute, which doth not give some person a just cause of complaint; and therefore, that if the thing sworn be true, tho' it be not known by him that he swears 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 wherein a party of subornation of perjury to have been committed, and must prove, that in the said 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 conduced to the proof or disproof of the matter in question: and if an action on the statute be brought by more than one, you must shew how the perjury was prejudicial to each of the plaintiffs; but it needs not be proved, that the perjury, which tends only to aggravate or extenuate the damage done, which the point within the statute as a point 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 judgment be reversed. 1 Henk. P. C. 187.

"If perjury be committed, that is within this statute, but concludes not corrupt perjury statute; yet it is a good indictment at Common law, but not to bring him with the corporal punishment of the statute. 2 Hal. Hlfs. P. C. 191-2.

"By the law. 2 Gao. 2. 25. 2. The more especially to deter persons from committing wilful and corrupt perjury; for by subornation of perjury, it is enabled to be made as it becomes, and that beides the punishment already to be inflicted by law for great crimes, that 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 kept to hard labour during all the said 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 to such place according to the sentence as 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 person so convicted or transported shall voluntarily escape or break parden, 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 felony in the county where he so escaped, or where he shall be apprehended. Stat. 23 Gao. 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 (averring such court or person to have authority to administer the same) together with the proper averment to shew the nature of the perjury; and that setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding; and without setting forth the commission or authority of the court or person before whom the perjury was committed. Sect. 2. In every information or indictment for subornation 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 setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding; and without setting forth the commission or authority of the court or person before whom the perjury was committed, or agreed to be committed. Sect. 3. It shall be lawful for any justice of affize, or nisi prius, or general goal-delivery, or of any of the great justices of Wales, or of the counties palatine (fitting the court or within 24 hours after) to direct any person examined as a witness before them, to be proceeded 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 prosecution is the same as if the person attending, or any 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 same being directed, with the names of the court assigned him; which certificate shall be deemed sufficient
of fact: production having been done of, it had
that an act or document or certificate shall be
then in evidence up any trial against any person upon
or production of, etc.

P. 2. & Geo. 4, c. 21.

[34]

In this case, the

10 Geo. 3, c. 21.

29 Geo. 4, c. 41.

[32]

Perpetua. As it is a legal word or term, it is
the tenant in chief and his successors in
as a subscriber or nasable insertion in a letter or
during the same time, and some or their
and this was so.

25 Hen. 8, c. 4.

[41]

A perpetuity in

24 Geo. 3, e. 13.

[35]

unanswerable, and the

24 Geo. 3, c. 13.

[33]

[35]

Sax. 3, c. 14.

The two laws of perpetuities, one absolute one
the commonwealth; it would put it to the common
by the Common Council. The

24 Geo. 3, c. 13.

[36]

in the

24 Geo. 3, c. 13.

24 Geo. 3, c. 13.

[36]

24 Geo. 3, c. 13.

[37]

24 Geo. 3, c. 13.

24 Geo. 3, c. 13.

24 Geo. 3, c. 13.

24 Geo. 3, c. 13.

24 Geo. 3, c. 13.

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24 Geo. 3, c. 13.

24 Geo. 3, c. 13.

24 Geo. 3, c. 13.

24 Geo. 3, c. 13.

24 Geo. 3, c. 13.
Peronath. To reproach by a vili or affronted character, so as to cast off the person reproached. *John.*

Was there a bond by 13. F. the defendant fad, that he made and delivered the bond to another 13. F. and not to the plaintiff; and a good plea; and the plaintiff was compelled to answer to it; *quod monta:* And so it seems that there were two 13. F., and the wrong 13. F. got the bond, and brough the action. *Br. Oligation,* pl. 81. c. 13 D. 7.

A. had a warrant to arrest 13. S. and A. demanded of a stranger what his name was, who said his name was 13. S. whereupon A. arrested him. The stranger brought false imprisonment; and adjured it lay; for the bailiff ought at his peril to take notice of the party. *No. 457. Trin. 38 Elz. Gent v. Lightwarrd*

Lord Keeper said, he had always noted this difference. If one of my name leaves a fine of my land in my name, I may well confess and avoid this fine, by throwing the special matter. But if a stranger, who is not of my name, leaves a fine of my land in my name, I shall not be received to over that I did not leave the fine, but another in my name; for in that matter contrary to the record; and so it is of a recognizance, 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 warrant on the roll, and so make it no fine, albeit the party cannot avoid by averment, during the time that the record remains in the record. *Cra. Edw.* 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 recognizance, but was prosecuted by another; and thereupon it was moved, that the bail might be vacated, and he be discharged, as was done in Cotton's cafe. *2 Cra.* 256. But the court said fine 21 *fac. 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 Spicer's cafe; wherefore it was ordered, that B. should bring the money into court, and he let at large to prosecute the offender. *Twidwell* said it must be tried in *Mid. Exon,* though the bail was taken at a judge's chambers in London, because filed here, and the entry is *venit coram Damins Regis,* &c., so it differs from a recognition acknowledged by my Lord Hubert, upon 23 H. 8. at his chambers, and recorded in *Mid.* there the *fis. fac.* 23 H. 8. 705. *Hob. Rep.* 195, 196. *Ven. 301. Beestly's cafe. Mod.* 46. S. P. Rawlin's cafe. *Cockeril,* who pernagd Befly was hang'd at Tyburn, but the rope was immediately cut; and afterwards Befly on motion had restitution of his goods in the hands of the sheriff. *Hill.* 28 Car. 2. B. R. 2 *fac.* 832. *Fac. cafe.

A commision of rebellion was awarded against A. whereupon B. came before the commissioners, and affirmed himself to be the person. The commissioners apprehended him by virtue of their commission; but per *Hale Ch.* B. the commissioners have no warrant to take him by their commission; his affirming himself to the person will not excuse them in false imprisonment, as has been held on the executing a *copia.* *Hard.* 323. *Pofch.* 15 Car. 2. *Tarke's cafe.*

Pertitara terrae, is the fourth part of an acre, which in the whole superficies contains forty pertite. See *Perth.*

Perufe or Parusie. (Perusia, Parusia.) Is derived from the French & paroie. *Forestue de laudibus legum Anglie,* cap. 51. pag. 124. hath these words, *Sed tunc placitantes (i. peti mirabilis) fe divertant ad perusiam & aliis conficiuntur cum perusionibus ad legem & aliis conscriptis soffl.* Of which Chaucer thus, prolog. 9, 3.

A fermant at law, that were and wife, and that often had been at the paroie.

Nam etsi legis paroie conferente ad clauditum incessuro, non ad tyrannos juria, quam minas avant, excrescente, facis Spelsum. *Edlin in his work, op. &c.* 56. says, it signifies an afternoon exercise or mood, lett the instruction of young students, bearing the same name originally with the paroie in Oxford. Mr. Somer says perusia signifies palatii atrium vel arca illa a frater auile Welfin, hodie, the palace yard. See his *Gloss.* in 10 scriptores, verbo *Triferium,* and see *Pead's Hist.* of Oxford. *2 Par.* fol. 6.

Pita, Puffa, Pio. A toy or weight, or certain weight and measure of cheese and wool, &c. containing two hundred and fifty-six pounds. *Cowell. edit.* 1727.

Pfalge, (Psalugum) Custom paid for weighing various or merchandise. *Id. ib.*

Piatimus, A weigher. *Id. ib.*

Pellina, Muff; or the money taken for muff, or fouler. *Ang. pos* 1713. *Reg. tom.* 2. pag. 213.

Pellulable wares. See tobe such wares or merchandise as peller, and take up much room in a ship. *32 Ed.* 8. *cap. 14.*

Petterson, Is mentioned in some of the ancient registers of our bishops, particularly in that of St. *Lindard de Ebor,* which contains a grant therof by King *Aethelstan.* *Cowell. edit.* 1727.

Petteterpe, (Denarius Sancti Petri, Petri) Otherwise called in the Saxon tongue *Romadesh,* the fee of *Rom,* due to *Roma,* and also *Romfesat* and *Rompenning* was a tribute given by *Inas,* King of the *West Saxons,* being in pilgrimage at *Roma,* in the year of our Lord 729. Thence it was handed over to *Hubertus,* the bishop of Saxon Words, verbo *Numamus.* And the like given by *Offa,* King of the *Mercians,* through his dominions in anno 7994. not as a tribute to the pope, but in submission of the English *school* or college there; and it we called *Peter-pence,* because collected on the day of *St. Peter's,* which was a penny for every house. *Spelm. de Can.,* tom. 1. *fol.* 3, 2. And in *St. Edward's* *Lawes,* num. 10. where we may read these words, *Omne qui habet 30. denariatus vitam peccante in danno suo de suo proprii,* *Agilaram lege debit denarium Sancti Petri,* & *leg Durnam dictum marcam,* *itfe were delect summantri in solenata appelationibus Peri & Petli & collegi ad *stitutum quod dictum ad Venta, ut ut aliquem aliquem detinatur.* See also King *Edgar's Lawes,* *76* cap. 4. which contain a sharp constitution touching the matter. *Steul,* in his *Annals,* p. 67. faith, that he who had twenty pennyworth of goods of one sort in his house, was to give a penny at *Lammas* yearly. See *Peter.*


Petition, (Petition) Hath a general signification to all kinds of supplications made by an inferior to a superior, and especially to one having jurisdiction. *S. P.* C. 4. A petition is made for that reason which the subject hath to help a wrong done by the King, who has a prerogative not to be freed by writ: In which senfe is either general, that the King do him right and reaso, whereupon follows a general indorsement upon the same. Let right be done the party: or it is special, when the conclusion and indorsement are special, for this or that to be done, *Staaff.* *Prag. c. 32.*

By *Statute* 13 *Car.* 2. *cap.* 5. The soliciting, labouring or procuring the putting the hands or content of above twenty perions to any petition, to the King, or either house of parliament, for alterations in church or state, unless by allent of three or more justices of peace of the county, or a majority of the grand jury, at the assize or frileons, &c., and repairing to the King or parliament to deliver fuch petition, with above the number of ten perions, is subject to a fine of 100l. and three month imprisonment, being proved by two witniss, within fix months, in the court of *B. R.* or at the assizes, &c. *Astatute* 13 *Car.* 2. made by this statute, hath enacted, it must be taken that petitions to the King contain nothing which may be interpreted to reflect on the administration; for if they do, it may come under the denomination of a libel: And 'tis remarkable, that the petition to the city of London, for the fitting of a parliament, was deemed libels, and it was suggested that the King's delay in calling a late parliament was an obstinacion to justice. *Reid,* *Stat.* vol. 4. *355.* Also the petition of the yeare...
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bishops, sent to the Tower by King James II. was called a libel, &c. 3 &c. 3 Med. Rep. 212. To subscribe a petition to the King, to frighten him into a change of his measures, intimating that if it be denied, many thousands of his subjects will be discontented, &c. is included among the attempts against the King's person and government, and was directed to wrong the King, and be punishable by fine and imprisonment. 1 How. P. C. 62.

Petition in Chancery, is a petition's request in writing, directed to the Lord Chancellor or Master of the Rolls, laying some matter or cause whereupon he prays somewhat to be granted, or done for him. P. R. C. 15.

Most things which may be moved for of course, may be petitioned for; as a commission to an officer, or plead, and demurr; 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. P. R. C. 15.

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 oblige him to deliver up papers. P. R. C. 270.

The Master of the Rolls is not to be petitioned for hearing, but the Chancellor; also the Chancellor only is to be petitioned touching pleas, demurrers 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 Vin. dict. 337, 338.

Pettinat 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, be- severance, tax, and such like charge, without consent by act of parliament; nor upon refusal to do, to be called to make answer, take any oath not warranted by law, give attendance, or be confined in any manner. And that the subject should not be burdened by the quartering of soldiers or mariners; and all commissions for proceeding by martial law, be annulled, and none of like nature suffer thereafter, shall the subject be (by colour thereof) be destroyed or put to death, contrary to the laws of the land. &c. See flat. Car. 1. cap. 7. entitled to Liberties and Rights.

Pett. rape. See Rape. Pett. late. See Rape.

Pettifentary, Parva sententia. To hold by pet- tiffentary, is to hold land: tenements of the King, yielding him a knife, a buckler, an arrow, a bow within a mile, a watch service, at the will of the first officer; and these belong not ward, marriage or relief. And here observe that none can hold by grant or petit sententia, but of the King. But see the statute 12 Car. 1. cap. 24.

Petit treason, (Parsou profris.) In French petit treason, i. produs 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, Which. Symbol. 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 master, 25 Ed. 3. cap. 2. where- this, &c. fee more in Stannard. Pl. Car. lib. 1. cap. 1. Gramm. Jewell's Justice of Peace, sect. 2. See Treason.

Petit, Is a sort of weight, we call it a stone, but differing in many places of England; in some places consisting of 16, in others of 14, 12 or 8 pounds.

Coalh. edit. 1727.

Petit treason, sometimes taken for a quarry of stones, and in other places for a great gun called petreard: 'Tis often mentioned in old records and historians in both sexes. Cowell, edit. 1727.

Petty chapman. See Vendors and Proletars.

Petty-sitter, from the Pr. petit, small, and Sax. safer, a woods, tutor or solicitor, a sly advocate, a petty attorney or lawyer; or rather a pretender to the law, having neither law nor conscience. Cowell, edit. 1727.

Vol. II. No. 113.


Saving of the charters granted to the tinners of Devon and Cornwall, 5 W. & M. c. 6. sect. 4.

Pharos, A watch-tower; no man may build or erect any light-houses, pharos, sea-marks or beacons, without lawful warrant and authority. 3 Jylk. sect. 204.

Pteridants and partriges, See Game.

Pliptitians. By flat. 3 Hen. 8. cap. 11. sect. 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, 5. one half to the King, and the other half to the person calling, sect. 2.

No person out of the said city and precinct of seven miles, except he have been (as afo said) 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 testimonials upon like pain. sect. 3. This shall not be prejudicial to the univers-

Stat. 14 & 15 Hen. 8. cap. 5. sect. 2. The corpora-
tion 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 and confirmed by act of parliament; and the six physicians in the letters patent name, and calling to them two or more of the com-
monalty, shall be called elects, and the elects shall yearly choose 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 choose more of the faculty in London, to supply the number of eight; so that they be fill be by the said superintendents; but a third time if so still from devils by the elects, and by superintendents approved. sect. 7. No person shall be suffered to practice in phys-

ic through England, until he be examined at London by the President and three of the elects, and have from them letters of testimonials, except he be a graduate of Oxford or Cambridge, &c. Stat. 32 Hen. 8. cap. 42. sect. 1. The president of the commonalty and fellowship of physicians, and the common and fellows of the same, shall be disfranchised to keep watch or ward in London, and shall not be chosen confidible, or any other officer in the city. sect. 2.

The said president, commons and fellows, may yearly elect four of the said commoners and fellows; and the said four physicians after oath ministered 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 physicians shall find defective, the same four physicians calling to them the warden of the mystery 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 physicians 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 them for the use of the same; and if the four physicians elected refuse to be sworn, or do obstinately refuse to make the search once in the year, having no lawful impediment, for such default, every of the said four physicians shall forfeit 10 l.
Physic may be both a science and a practice. In the context of legal cases, the question of whether a person is qualified as a physician can be a matter of significant legal consequence. In the case of *Debtor*, Lord Ch. J. did not think this question worth being found specially. 

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 reasons for taking a particular case out of the privilege of physicians in London. *Almirantur*. 10 Mod. 353, 354 Ed. 3 Geo. 1. B. R. College of Physicians v. *Debtor et Wifd*.

Debt upon the statute 14 Hen. 8. cap. 5. by the plaintiff as president of the college of physicians in London, and of the corporation of physicians there, for that the defendant used the art of physic in London without licence from the college there, against the statute and their 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 practive physic or surgery, being full of merit, notwithstanding any act to the contrary. The plaintiff replies and states the statute 1 M. cap. 9. which confirms their charter, and every article thereof to fland in force; any act, statute, law, or cullum to the contrary notwithstanding. Hereupon the defendant demurred; 1st, because this general clause in this law doth not restrain the statute of 34 Hen. 8. 2dly, That this pleading is a de
diciture, as it hath been said before; and 3dly, the defendant argued for the plaintiff, 1st, that the act of 34 H. 8. is repealed by the 1 M. quod the college of physicians in London, as fully as 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 fland and be available, the statute of 34 H. 8. cannot fland; for the record in this case. 

In an action for practing physic within seven miles of London without licence, the case upon a special verdict was, that the defendant being an apothecary by trade, was sent for by J. S. then sick of a certain distemper; and he having seen, and being informed of the said disease, did without prescription or advice of any medical person, and further advice, did administer the said J. S. several parcels of physic, as proper for his said distemper, only taking the price of his drugs; and if this were a practing of physic, such as is prohibited by the statute was the question; And after several arguments the court at last unanimously agreed, that practice thereby was not committed, and this statute confined. In judging of the disease and its nature, constitution of the patient, and many other circumstances. 2dly, In judging of the fittest and propercst remedy for the disease. And 3dly, In directting and ordering the application of the remedy to the disease. That and the proper business of an apothecary his duty and convenience to prepare the prescriptions of the doctor pursuant to his directions. It was also agreed that the defendant's taking upon himself to fend physic to a patient as proper for his diysterer without taking aught for his pains, is plainly a taking upon himself to judge of the disease, and fitness of remedy, as also the executive or directing part. Et per
tur. Plaintiff had judgment.

Note: This judgment was reversed in *Euna priorem*, 6 Mod. 44. Mich. 2. *B. R. College of Physicians v. Rey*.

One that has taken his degree of doctor of physic in either of the universities may not practive in London, and within seven miles of the same without a licence from the college of physicians; per *practica*, and 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's taking the doctor's degree, the court was of opinion, that there might have the nature of a recommenda

tion. By which, if there are such testimonials, but care should be taken, that no medicines whatsoever are contrary to the sufferer's medicine, or that the opinion of a competent medical man be obtained.
Pio, (Pipas,) Is a roll in the Exchequer, otherwise called The Great Roll, anno 37 E. 3. cop. 4. See Clerk of the pipe. It is also a measure of wine or oil, containing half a ton, that is, six fons and six gallons.

Pitace, (Pirates,) 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 whom what was used for a better use, being attributed to such persons to whom it was used for the benefit of the public and to the commonweal.

Pitot, (Pillories,) Were a sort of monkeys; so called because they wore black and white garments like magpies. They are mentioned by Wallington, pag. 134.

Pittotiana, (Pillotiana,) A pitance, a small larges, an allotted portion of meat and drink distributed to the members of some collegiate body, or other people, upon a high festival, a tiled anniversary, or such like solemnity.

Pittotarius, The pitianer or officer in collegiate churches, who was to distribute the several pitances at such times, and in such proportions as the several founders or donors had appointed. See Pittature.

Pig of lead. See Piglet.

Pillory, &c. See Pillories.

Pillory, a piece of money which we call pile, because it is the sum on which the impression of a church built on piles. Pitts, lib. 1. cap. 39. He who runs an appeal of robbery or theft against another, must show certain quantity, quality, price, weight, number, measure, value &c. &c., where pile signifies exarum partum, et in aliqua parte.

Pilatus, A blunted arrow. Id. 18.

Pilchard. See Fish, Porpoises.

Pileterus, Such an arrow as had a round knob at the head, to hinder them from going too far into the mark, from the Latin pilea, which signifies any round ball, like a ball.

Pileus supplentationis, A cap of maintenance. Pope takes such a cap with a sword to Hen. 8. anno 1514.

Pilflow, (Collyriofum, quäl collem fingent; pilloria, from the French pilier, i. e. depulator,) Is an engine used of wood, to punish offenders, well known. In the laws of Conatus, cap. 42, it is called Halpiong. Sir Thomas Smythe says, 'Tis Sapphilia machina ad hitamus quum parriz facrum.' Cowell, id. 1727.

Pilots, Regulations of the pilots at Dover and Deal, Geo. 1. c. 13. continued by 4 Geo. 3. c. 12. See Strang, pag. 249, for the construction of 3 Geo. 1. c. 13.

Lordwarden, and commissions of lead manage may make regulations for the government of the Dover pilots, Geo. 1. c. 21. stat. 14. continued by 4 Geo. 3. c. 12. See Strang, pag. 249, for the pilots of the Trinity-Hall at Oxford, 5 Geo. 2. c. 20.

Pine trees, In the plantations how preferred, 9 Ann. 17. See Stoves.

Pinnas bibere, or ad pinnas bibere, The old culum of a drinking brought in by the Dones, was to fix a pin in the hole of the wall-bowl or wooden cup, and to drink exactly to the pin, as now in a fealed glass, &c. This kind of drunkenness was forbid by the clergy, in the council at London, anno 1102. Professi et non cant ad libitum, nec ad pinnas bibant. Cowell, id. 1727.

Pins, Directions for the good making of them, 34 &c. continued at page 37 Hen. 8. c. 13. permitted to be imported, 27 Ed. 1. c. 13.

Pitances, See Lumps.

Pilote, (from the French pilote, i. e. ferrer,) Signifies such labourers, as are taken up for the King's navy, to cast up tucks and underneath forts. 2 &c. cap. 20.

Pits, (Fire pits,) Were a sort of monks; so called because they wore black and white garments like magpies. They are mentioned in Duke and Student, cap. 5, who tells us 'tis a court incident to airs and markets, to be held only during the time that fairs are kept. Cowell, id. 1727. See 7 Tit. 11. c. 16. See Court of pursuver.
like cafes in which they would have been accesse to a felony at Common law; and from hence it follows, that accesse 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. 5. which provides against accesse in one county to a felony in another, extends not to accesse 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 26 H. 3. 3 Inst. 112. 1 Hawk. P. C. 90.

Yet it has been resolved, that an offender standing mute on an arraignment, by force of this statute, shall have judgment of paine fort & dures; for the words of the statute are, that a commissione shall be directed, to hear and determine such offences after the common course of the laws of the land. 3 Inst. 114. Dyer 241. pl. 24. 308. pl. 73. It has also been held, that the indictment for this offence must allege the fact to be done at sea, and must have both the word felony and piracy in it; 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 conseqently the taking of an enemy's ship by an enemy is not piracy, but robbery. 3 Inst. 112. 1 Roll. Rep. 175. 1 Hawk. 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. Mor. 756. 1 Roll. Rep. 175. 1 Hawk. P. C. 100.

By the 11 & 12 W. 3. cap. 7. it is enacted, "That all pirates, 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 any of his Majesty's islands or plantations, &c. to be appointed by the King's commissione under the great seal, to which the admiral, or any of the admirals, &c. and such persons or 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 a court of admiralty, which shall consist of seven persons at the leaft, and shall proceed in the trial of the said offender according to such directions as are yet 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, 1 Geo. 1. that any 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 commision 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 determined, with or without trial, felon and robbers for 20 d. 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 free or mariner, shall in any place, where the admirals hath jurisdiction, betray 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 merchandize, or yield them up voluntarily to any pirate, or bring any seducing message from any pirate, enemy or rebel, or confult, combine or conspirerate with or attempt, or endeavour to corrupt any commander, master, officer or mariner, to yield up or carry away any with any ship, goods or merchandize, or turn pirate, or go over with pirates, or if any person shall lay violent hands on his commander, whereby to hinder him from executing his office; or on or 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 confinwed thereof according to the directions of this act, shall have and suffer pains of death, lots of lands, goods and chattels, piracies and robberies upon the sea ought to have and suffer,"

And it is farther enacted by the said statute "That all and every perfon and perons whatsoever, who shall either on the land or upon the seas wittingly or knowingly fet forth any pirate, or aid and assist, or maintain, procure, command, counsel or advise any perfon or perons whatsoever, to do or commit any perons or perons or robberies upon the seas, and such perons or perons shall thereupon do or commit any such piracy or robbery, then all and every such perons or perons whatsoever fo as aforesaid fett forth any pirate, or aiding or affisting, maintaining, procuring, commanding, counselling or advising the same, either on or to his trust, or that shall confine or 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 confinwed thereof according to the directions of this act, shall have and suffer pains of death, lots of lands, goods and chattels, piracies and robberies upon the sea ought to have and suffer, and further, that after any piracy or robbery is or shall be committed by any pirate or robber whatsoever, every peron or perons, who, knowing that such pirate or robber has done or committed such piracy or robbery, shall upon the land or upon the water receive, entertain, take and receive, and hold any pirate, or robber thereof, or receive into his custody any ship, vessel, goods or chattels, which have been by such pirate or robber piratical and feloniously taken, shall be by this statute likewise adjudged to be accesse to piracy and robbery; and that all such accesse to piracy and robberies that 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 piracy and robberies and mercy be, and are no otherwise, and being thereupon attainted shall suffer such pains of death, lots of lands, goods and chattels, and in like manner a principal of the principal, or of the principal of the principal, and a confederate, shall suffer according to the said flat, of 28 Hen. 8. which is declared to be in full force; any thing in the act to the contrary notwithstanding."

And by 4 Geo. 1. cap. 11. "All perons 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 at sea, by the court of admiralty of the same county of the place of the taking of the ship, or of the persons or merchandize, according to the common course of the law, according to 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 sup preffing of piracy, it is declared and enacted, "That if any commander or master of any ship or vessel, or any other peron or perons, shall any wise trade with any pirate, by trick, barter, exchange or in any other manner, or shall furnish or pay to any pirate, robber or robbers upon the seas with any ammunition, provision or stores of any kind, or shall fit out any ship or vessel knowingly, and with a design to trade with or supply, or correspond with any pirate, felon or robber upon the seas; or any peron or perons shall any ways condute, combine or conspire with any pirate, robber or robbers upon the sea, or give or do anything to any pirate, robber or robbers upon the sea, 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 suffer such pains of death, lots of lands, goods and chattels, as pirates, felons and robbers upon the seas are for all or any of the matters aforesaid, according to the statute made 25 Hen. 8. for pirates, and the statute made 11 & 12 W. 3. and he and they being condemned 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 to save any peron or perons belonging to any ship or vessel whatever, upon meeting any merchant ship or vessel.
and farther enabled, "Every ship, or vessel, which shall be fitted out with a design to trade with, or supply or correspond with any pirate, and all and every goods and merchandizes put on board the same for any intent or purport to trade with any pirate, felon or robber on the seas, shall be ipso facto absolved, one moiety thereof to the use of the King's Majesty, his heirs and successors, the other moiety to the persons who shall first make discovery, and give information of such intent or design; and such person or persons who shall first make such discovery, and shall and may sue for and recover the said ship or vessel, and all and every the goods and merchandizes on board the same, in the high court of admiralty." And Sect. 5. "Whereas there are some defects in the laws for bringing persons who are accomplices to piracy and robbery upon the seas to condign punishment, if the principal committed such piracy and robbery is or cannot be apprehended and brought to justice, be it therefore enacted, that all and every pirate or robber or the said ship or vessel, made by the said statute 11 & 12 W. 3. are declared to be accessory or accomplices to any piracy or robbery therein mentioned, are hereby declared, and shall be deemed and taken to be principal pirates, felons and robbers, and shall and may be required of, heard, determined and adjudged in the same manner, as persons guilty of piracy and robbery, and ought to be required of, tried, heard, determined and adjudged by the said statute 11 & 12 W. 3. and being thereof attainted and convicted, shall suffer such pains of death, lots of lands, goods and chattels, and in like manner, as pirates and robbers ought to be by the said act to suffer. And all and every offender or offenders convicted of piracy, felony or robbery by virtue of this act, shall not be admitted to have the benefit of clergy, but be utterly excluded of and from the same." And Sect. 6. That to the end that a farther encouragement may be given to all seamen and mariners to fight and defend their ships from pirates, it is farther enacted, That in case any seaman or mariner on board any merchant ship or vessel, or any other ship or vessel, shall be manned in fight against any pirate, every such seaman and mariner, upon due proof of his being maned in such fight, and shall be afterwards appointed by a statute made the 23 Car. 2. intituled, An act to prevent the delivering up of merchant ships, and for the increase of good and serviceable seamen, but shall also be admitted into, and provided for in Greenwich hospital, preferable to any other seaman or mariner, who is disabled from service or getting a livelihood by his sea trade. And Sect. 6. It is farther enacted, "That in case any commander, master or other officer, or any seaman or mariner of any merchant ship or vessel, which carries guns and arms, shall not, when they are attacked by any pirate, or by any ship or vessel on which any such pirate is on board, fight and endeavour to defend themselves, and their said ship or vessel from being taken by the said pirate, or shall utter any words to discourage the other mariners from defending the ship, and by reason thereof the said ship or vessel fall into the hands of such pirate; then, and in every such case, every such commander or master, or other officer, or any seaman or mariner, who shall not fight, and endeavour to defend and save the said ship or vessel, or who shall utter any such words as aforesaid, shall lose and forfeit all and every part of the wages due to him and them respectively to the owner and owners of the said ship or vessel, and shall not be permitted to sue, recover the same, or any part thereof in any court of law or equity, and as a farther punishment shall suffer six months imprisonment." And Sect. 7. "For prevention of feamen or mariners doing saving merchant ships or vessels abroad in the plantations, or in any other place, it is hereby declared, That no master or owner of any merchant ship or vessel shall pay or advance, or be liable 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 pirate or other vessel shall return to Great Britain or Ireland, or the plantations, or to some other of his Majesty's dominions whereunto 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 be liable 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 he shall pay or advance, to be recovered in the high court of admiralty by any person who shall first discover and inform the same. Persons committing holibettes, or aiding enemies, at sea, may be tried as pirates, 13 Geo. 2. c. 39. Piracies and robberies on the sea, excepted out of the general pardon, 20 Geo. 2. c. 52. c. 13. See 16 Vin. Act. tit. Pirates. Piracies goods. In the patent to the admiral he has granted to him bona piratae: The proper goods of pirates only pay by this grant; and not piratical goods. So it is of a grant de fide libertatis, the grantor shall not have goods stolen, but the true and rightful owner. But the King's goods may have piratical goods, if the owner be not known. 10 Rep. 109. Dyer 769. Jent. Cent. 335. Pitarras, (Pifaria, from the French pachirée, i. e. pifaria) is a liberty of filing in another man's waters: In law French pachirée. See Ryl. Pl. Port. Part. 1409. Piscenarius. Is used in our records for a fishmonger. Pat. 1 E. 3. part. 3. m. 13. Pitance, or Pittance, (Pitanica) A small repast of fish or flesh. Cowl. edit. 1272. Pitianarium. Was an officer in the monasteries, whose business was to provide and distribute the provisions of herbs and meats amongst the monks. It is mentioned in the Monast. 1 tom. pag. 143. Pitch and tar, Not to be imported but in English ships, 12 Car. 2. c. 18. f. 8. Not from the Netherlands or Germany, 13 & 14 Car. 2. c. 14. f. 23. To what in general liable, 4 W. & M. c. 5. f. 2. Penalties 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. f. 1. c. 9. 5 Geo. 1. c. 11. f. 10. 17. 18. 8 Geo. 1. c. 13. f. 4. 25. 26. 27. Plantation pitch and tar to be clean, 5 Geo. 1. c. 11. f. 16. 24 Geo. 2. c. 52. f. 2. 25 Geo. 3. c. 35. f. 3. Pitching penes, (commonly a penny) Is that money which is paid for pitching, or setting down every foot of corn, or pack of any of her merchandise in fairs or markets. Cowl. edit. 1272. Placard, (mentioned in fl. 2 3 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 placard in Dutch is an edict or proclamation. See 33 H. 8. c. 6. Place, (Local) Where a fact was committed, is to be alleged in appeals of death, indulements, &c. and place is considerate in pleadings, 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. Coke, 282. When one thing doth come in 6 N to the
the place of another, it shall be said to be of the same nature as in the case of an exchange, Use, Shop, Ept. 700. See Let. 11, and 16 Tit. Act. tit. Place.

Platura, Pot, or pleading, or debates and trials at law. Platura is a word often mentioned in our historians and law books: At first it signified the public affumblies of all degrees of men, where the King presided, and where the problems were about the great affairs of the kingdom, and these were called generalia platura, because generalis universarum majoris et minorum. cum dicatur quia ipsum ille dicitur conveniali. This was the custom in our neighbouring nation of France, as well as here, as we are told by Hurnman, De Ordine Paletii, cap. 29, and by the historians of France in the year 1467.

Some of our historians, as Simson of Darom, and others, who wrote 300 years afterwards, tell us, that those assemblies were held in the open fields; Nactus enim a priori Regem in latius afflgere curiam, ubi Rex ju- dicatori in aferis, ubi est curia fac. Some are of opinion, that these Platura generalia, and Curiae Regis, were what we now call a parliament: 'Tis true, the lords courts were so called, viz. Platura generalia, but other Curiae generali, because all their tenants and vassals were bound to appear there. We also meet with Platumum nominatum, i.e. the day appointed for a criminal to appear, and to make his defence. Lig. H. t. cap. 29, 42, 63. Platumum fructus, i.e. when the day is past. Lig. H. t. cap. 50. My Lord Coke tells us, that the word is derived from planta, quia bene plebescit fitter amula placat: This seems to be a very fanciful derivation of the word: It seems rather to be derived from the German platen or from the Latin plantae, i.e. fields or trees where these assemblies or courts were first held. But this word planta did sometimes signify penalties, fines, mulcts, or emendations, according to Carese of Tilbury, or the Black Book in the Exchequer, lib. 2, tit. 13. Platura autem dicuntur parasitieum in quibus incident delinquentera. So in the laws of Hen. 1. cap. 12, 13. Hence the old rule of customs, Comae habitat servium damarium placitum, is to be thus understood; the Earl of the county shall have the third part of the money due upon mulch, fines, and amercia- ments imposed in the affiles and county courts. Cavell, edit. 1727.

Plautari, (i.e. Litigari & causas agere,) To plead. H. t. 16.

Placer, A plender. Ralph Fambard is recorded to be Teatin regii placiter, in William the Second's time.

Plague, For the ordering and relief of perfons inflected with the plague, 1 Fac. 1. c. 31. It is to be observed that a person of foreign birth who is in London is usually deemed felon, 1 Fac. 1. c. 31. 5. Regulations for ships to perform quarantine, 4 Ann. c. 2. 7 Geo. 1. c. 3. 3 Geo. 1. c. 8. and 10. 1 Geo. 2. c. 13. 6 Geo. 2. c. 34. Penalty on maler breaking quarantine, 4 Geo. 1. c. 18. 14. 27 Geo. 2. c. 18. 5. 4. Directions for performing quarantine and erecting lazarets, 26 Geo. 2. c. 46. 29 Geo. 2. c. 8. Perfons disobeying directions guilty of felony, 26 Geo. 2. c. 6. 3. f. 1. 2. 3. 8. 10. 17. 18. Order for quarantine to be read in churches, 26 Geo. 2. c. 6. 3. f. 20.

Goods liable to retain infection, coming from the Le- mant without a clean bill of health, not to be landed unless in a foreign larget, 26 Geo. 2. c. 18. f. 12.

Plaint, (querelun) Is used for the propping or exhihiting of any action personal or real in writing, and to it is used, Brs. tit. Plaint in affile, and the party making this plaint, is called The party plaintiff. Kitchin, for.

Plaintif, A plunk of wood. Cavell, edit. 1727.

Plaintiffes, Not to exerice the art of a painter in London, 1 Fac. 1. c. 22.

Platation. Sugar, tobacco, cotton-wool, indigo, ginger, and dying wood of the growth of the plantations, shall be exported thence to England only, 13 Geo. 2. c. 18. f. 18. Rice and molasses, 3 & 4 Ann. c. 5. f. 12.

No European oiff shall be imported into any planta-
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. see. 7.

Duty on coffee of plantations reduced, 5 Geo. 2. c. 24.

Duty on foreign rum and molasses imported to the plantations, 6 Geo. 2. c. 13.

No sugar to be imported into Ireland, unless of the growth of the plantations, or shipped in Great Britain, 6 Geo. 2. c. 26.

No sugar to be imported into Ireland, unless of the growth of the plantations, or shipped in Great Britain, 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. and 10 W. 3. c. 23. f. 8.

Allowance on exportation of sugar reduced in Great Britain, 6 Geo. 2. c. 13. continued, 4 Geo. 3. c. 12.

Extended to all British ships, 15 Geo. 2. c. 32.

Oaths that the ship belongs to British subjects, 12 Geo. 3. c. 30. f. 9.

Officers of crews to examine unfledged ships, 12 Geo. 3. c. 30. f. 6.

Ships taking in other goods subject to entries, 12 Geo. 2. c. 30. f. 10.

Charters to be granted in time of war to adventurers at sea, and to be granted in Great Britain, 12 Geo. 2. c. 4. f. 13.

Foreigners residing fourteen years in the plantations, and taking the oaths, to be deemed natural subjects, 13 Geo. 2. c. 7.

Unlawful rocks and undertakings in the plantations prohibited, 14 Geo. 2. c. 37.

Mails of ships to make oath of the truth of their register, 15 Geo. 2. c. 361—376.

Relief provided where the register 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.

In plantations not to be impeded, 19 Geo. 2. c. 30.

A premium on plantation indigo, 21 Geo. 2. c. 30.

8 Geo. 2. c. 25. Continued and amended, 3 Geo. 3. c. 25.

Forks may be imported from the plantations free, 3 Geo. 3. c. 26.

Bar iron may be imported from the plantations to land, and pig iron to any port free, 23 Geo. 2. c. 29.

Bar iron to any port, 30 Geo. 2. c. 16.

Slitting mills, shell furnaces, &c. not to be erected in the plantations, 25 Geo. 2. c. 29. f. 9.

The affises of the plantations may be imported free, 4 Geo. 2. c. 51.

Refrainment of paper credit in the plantations, 24 Geo. 2. c. 53.

The act concerning att hk of West Indies to the British colonies, 25 Geo. 2. c. 6. 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.

Indented servants may be infilled, 29 Geo. 2. c. 35. f. 1.

Tears raised in America, when joined with British forces, subject to the rules and articles of war, 30 Geo. 2. c. 6. fett. 72.

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 Flings, 30 Geo. 3. 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 lamp duties in the plantations, &c. 5 Geo. 3. c. 12. Repealed by 6 Geo. 3. c. 11.
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 the courts of justice should be in French. 4 Ser. Abr. 1. 10 Ca. 132.

But now by 4 Geo. 2. cap. 26. it is enacted, that all writs, process, pleadings, rules, indictments, records, and all proceedings in any courts of justice within England, and in the courts of Exchequer in Scotland, shall be in the 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 expediting 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; as, that good master must be pleaded in right form, apt time and due order, but that that, which is but incoherent or conveyance to the subfunction, need not be so certainly alleged, as that which is the gift of the plea. Ca. Lit. 303. Plow. 55. 81. Ca. Jde. 762. 768. That which is apparent to the courts, and appears from the nature of the action in the record, need not be averred. Ca. Lit. 303. 7 Ca. 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. Dyar 16. Ca. Lit. 303. Hb. 234. Lamb 186.

That what the parties have agreed in pleading shall be admitted, the jury find otherwise. 2 Med. 5.

That when a man will recover a thing from another, it is not enough for him to detroy such person's title, but he must prove his own a better, according to the rule, motier of conditio privatam. Vaugb. 56. 60. per Lord Halsey.

That every man shall plead plea as are pertinent and proper for him, according to the quality of his case, estate or interest. Ca. 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 exprest according to the forms of law; and as to the other respect, it is causa of demurrer. Hb. 164. per Lord Halsey.

That every plea in bar, being a confession and avoidance of the plaintiff's action, must be substantial and certain, with an avoidance of the plaintiff's demands, which he may traverse, and thereon go to issue, because the party in whose favor the plaintiff stands committed, as far as it is not avoided by the defendant, Dyar 66. Godb. 253. 1 Lem. 78.

That if a count, avowry (which is in nature of a count) replication, &c. want form, or omit circumstances of time, place, &c. they may be made good by the replication, and the replication by the rejoinder, Lec. 7 Ca. 65. a. 8 Ca. 120. b. Ca. Lit. 327.

That all pleas must be alleged directly, and not by way of theatrical; nor is it sufficient, that what ought to be expressly pleaded, may be deducted by argument from what is pleaded. Ca. Lit. 303.

That in matters triable by our law, all things indule 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 it certain enough to ground a certificate, it is sufficient. 3 Lem. 306.

That where one is authorized to do a thing by common law, statute, custom, grant or commission, he ought to shew, that he hath purposed the substance of it accordingly. Ca. Lit. 303.

That general effates in fee simple may be generally alleged; as that J. S. was feized in fee; but the commencement of particular effates must be shewed, because they could not originally commence without a conveyance, which must be shewed, unless they be alleged by way of indenure only. Ca. Lit. 121. a. 303.

Plea of the Grant. Placita ad gladium. Rovam the third Earl of Chester, in the second year of Henry the Third, granted to his barons of Cheshire an ample charter of liberties. Except plaiitia ad gladium non applicabintur, in articles Regis infra custumam Cœlestre. 3 E. 4. Except the writs of William the Conqueror gave the Earldom of Chester to his kinsman Hugh, commonly called Lutus, ancestor to this Earl Rovam's, Tenure ita libre per gladium, ficta rea Wilhamius tenens Anglicam per nonian. And confirms the same to the said Earl, and all his heirs, for ever, by the form of that ancestor, Contra possem Denis comiti, gladium & dignitatem sibi, & contra dignitatem gladii Cœlestre. These were the pleas of the dignity of the Earl of Chester, Sir Peter Leicester's Hjdp. Ant. fol. 164. Cowell, ed. 1727.

Pleasant, Pseudolais scilicet, A mother church, which has one or more subordinate chapels. Cowell, ed. 1727.

Pleasant, A rural dean, because the deansies were commonly affixed to the plebanies, or chief mother churches within such a district, at first commonly of ten parishes. But it is inferred from several authorities, that plebanus was the usual title for every rural dean, but for such a dean, or his mother church as exempt from the jurisdiction of the ordinary, who had before the authority of a rural dean committed to him by the archbishop, to whom the church was immediately subject, Cowell, ed. 1727.

Pledge, (Plagus, may be derived from the Fr. pleid, speller, as pleine, aucum, i. e. joler pro aliquem; to be silly for a person; in the same signification is pleeg used by Glanvill, lib. 10. ca. 5. and plegiato for the act of suretyship in the interpreter of the Grand Commissary of Normandy, cap. 60. Plegiis disentur personae, qui obligant ad loca, ad quod quis est mittens, tenetur; and in the same book, cap. 89, 90. plegiato is used in the same sense with Glanvill; fo ab plagi are used for pleodi in the pl. Oculi, part. 5. cap. 22. Charta de Foretella. Tho. word pleiados is used also for frankpledge somewhat in the same time of, in the end of William the Conqueror's time, set out h. Lambard, in his Archivius, fol. 125. in thes word Omnibus hominis quem voluerit se tenere pro liberis in plie or in frankpledge, et quantum ad ejusdem, je quod offenderit, et eisque are called capitall pledges. Kitchin, fol. 1. See Co. 4 Inf. fol. 180.

When writs were delivered to the sheriff to be his return into C. B. he was obliged before the return thereof to take pledges of prosecution, which when they were delivered, and were considerable, were real and responsible persons, and answerable for the same amounts. But they being now so inconsiderable, there are only formal pledges entered, viz. John Doe and Richard Roe. But there is a difference in debt and in trespass for in trespass the attachment of the goods is the first process, and because the defendant is thereby hurt, there fore the writ commands the sheriff to take pledges before he executes the process. But in debt they begin with a summons, and if 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, this 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 pledges were not taken in Chancerery, but committed to the sheriff, was, that he living in the country was fupposed to know who were sufficient security, and being to levy the amercement afterward, they were to take ample security for them. G. High, ed. C. B. 6. 7.

Pledges in statute merchant shall be answerable if the principal be insufficient, Stat. de Mercator. 11 Ed. 1. Poor plaintiffs not to find pledges, St. Hwel. 12 Ed.: but to give caution per fidem, ibid.

Pledges may be bound as principal debtors, Stat. de Mercator. 15 Ed. 1. &. 7.
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Pol. Birkin. See Erclestone. Blackthor, is an old English word, signifying sometimes the estate with the habit and quality of the land, and extends to rent-charges, and to a possibility of dower. 1 Inst. fol. 221. b.

Plonale, (mentioned in 1 R. 3. cap. 8.) A kind of court martial, in which felon broken.

Plowman, (Elemenra anestriola,) Was anciently a penny paid to the church for every plowland. Mon. Agric. 1 part. f. 256.

Plotcatch, A right of tenants to take wood to repair ploughs, carts and harrows; and for making mazes, for oystering.

Plowland, Is the same with a hide of land; and a hide or plow-land, it is said, doth not contain any certain quantity of acres; but a plough-land, in respect of repairing the highway is settled at 50/. a year by the fl. 7 & 8. H. 3. c. 29.

Plotter, In former times was money paid by some tenants, in lieu of service to pro the lord's lands. 1 de Jess Rep. 280. See Storge.

Plurality, (Pluralitas, mentioned in fl. 21 Hen. 8. cap. 13.) The having more than one, chiefly applied to some churchmen, who have two, three or more benefices. Selden, in his Titles of Honor, fol. 687; mentioning Pluralitas, Titles, Canon. 1727. 1 part. f. 125.

Plurality of livings, is where the same person obtains two or more spiritual pretenlements, with due of souls; in which case the first is void ipsa facta, and the patron may prefer it, if the clerk be not qualified by dispensation, &c. for the law enjoins residence, and it is impossible that the same person can reside in two places at the same time. 3 B. Mill. 220. Per. 3. fl. 135.

By the Canon law no ecclesiastical person can hold two benefices with cure fome & fome, but that upon taking the second benefice, the first is void; but the pope by usurpation did dispence with that law; and at first every bishop had power to grant dispensations for pluralities, till it was absolutely inhibited, held anno 1322, and a constitution was received till the flature 21 H. 8. c. 15, M. J. 119, 2 Nof. Flr. 1727. The fl. 21 H. 8. orders, 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 instituted, then the first shall be void: So that there may be no case within the statute; and a plurality by the Canon law. 2 L. 1356. The power of granting dispensations to hold two benefices with cure, &c. is vested in the King by the aforefaid statute: and it has been adjudged, that a dispensation is not necessary for a plurality, where the King prefers his chaplain to a second benefice, by his written instructions, to which the King hath power to grant as supreme ordinary. But if such a chaplain be preferred to a second benefice by a benefice, he must have a dispensation before he is instituted to it. 1 Saft. 161. The archbishop's dispensations and King's confirmation, regularly are necessary to hold pluralities; and the statute 21 H. 8. ought to be confined strictly, because it introduces non-residence and plurality of benefices against the Common law. 19. 1. 272. See Presentation, Residence.

Pluris, Is a writ that goeth out in the third place, after two former writs have had no effect; for first the original capitall suffum, and if that should not, then goeth out a writ of sequestration, and if that also fail, then the pluris. See Nat. Brev. fol. 33, in the writ de recomp. capesusa. See in what diversity of cases it is used in the table of the Original Register.

Plymouth, Power given to bring the river-water to the town. 2 Eliz. c. 20.

Point, of wool, is half a sack. 3 Inst. fol. 607.

Point, of cloth, is a Foreign point or cut-work not to be sold in England, or exported or imported, 13 & 14 Car. 2. c. 13. English point or cut-work may be exported duty-free. 11 & 12 Will. 3. c. 3. fl. 15.

Poisoning, Is wilful murder by fl. 1 Ed. 6. 12. fol. 13. Perons poison in one county dying in another, the indictment found where the death happens shall be good, 2 & 3 Ed. 6. c. 24.

Richard Clee was attainted of high treason, for put ting poison into 3 pots of potage boiling in the bishop of Rich- chelley's kitchen, by which two persons were poisoned; and there was a particular statute made for his punishment, viz. by the statute 22 H. 8. cap. 9. it was enacted, that he should be boiled to death. Ann. 22 H. 8. Rich. 1727. 1 part. f. 227.

It seems to be clear, that if a man persuade another to drink a poisonous liquor, under the notion of a medicine, who afterwards drinks it in his absence; or if A. intending to poison B. put poison into a thing, and deliver it to C. who knows nothing of the matter, to be by him delivered to B. and C. to be innocent, it may be accordingly in the absence of A. or if one incite a madman to kill another, who afterwards kills him in the absence of the person that incited him; in all these, and the like cases, the procurer of the feony is as much a principal as if he had been present when it was done. And so likewise all those feem to be who were present when the offence was inflamed, and privy to, and concerning to the design. The those who only abetted their crime by their command, counsel or advice, but were absent when the poison was inflamed, are accessories, and not principals. Also if A. intending to poison B. deliver a poifonous thing to C. to be by him delivered to B. and C. knowing it to be poison, and the absence of A. in this case is only principal in the felony, and B. an accessory. 2 Hlont. P. C. 313.

Poles, Side-gowns, or long-feen gowns, which fathion grew so affected and extravagant, that the wearing of them was prohibited by Philip Repnigates bishop of Lincoln, in his injunctions anno 1410. Covel. ed. 1727.

Poles, Cutting or spoiling them how punished. 1 Eliz. c. 7.

Pole, was a fort of face, sharp or piched, an turly used at the toe, as an ftrick, camme in fathion in the reign of William Rufus, and by degrees comes to that excessive length, that in Richard the Second's time they were tied up to the knees, with gold or silver chain, according to the dignity of the wearer. They were for hidden by Edward the Fourth, in the fifth year of his reign, under a great penalty, to be worn so long, be were not used till the time of Henry the Eighth. Malloftry, in the life of the foemens 1. William Rufus, speaking of the exceffes of thofe times, hath thefe words, Tunc fivius crinium, tunc luxus voffium, tunc ujus calearum cum avuncati aletis invenit offic, Cofel. edit. 1727.

Polaris, A muller. Id. 1b.

Polea, The ball of the foot. Id. 1b.

Polecria, A flud of coals. 'Tis mentioned in Flite, lib. 2. cap. 87. 'stem ujus fi sacere batyrum, curareque de poletica obtiner.'

Poetry of insurrection. See Insurrection.

Pollard, A fort of fporious coin, which with curios were long time prohibited. Anti. Heflon, in ann. 1725, pag. 431. Pollardis, erors, fiolings, eagle, leoninis and fpingings, were heretofore several forts of money use in England, but long since difufed. 2 21f. f. 577.

Pollardises, or Pollegrants. Are fuch trees as have been ufually cropt, and therefore diftinguifhed from timber.

Poll-money, (Capirotia,) Was a tax ordained by 6d. of parliament, 19 Car. 2. cap. 1, and 19 Car. 2. cap. 6. By the fl. of which every subject in this kingdom was afsebled by the head or poll, according to his degree; viz. every Duke 100/. every Marques 80/. Barons 50/. Knights 12/. All esquires 10/. and every fingle partner 12/. who were obliged to make no new tax, appears by former acts of parliament, where Quliticam capa coniguitus, quam flatus utrisque fessut pro capitio sua sobero cnebat. Calgariam. anno 1380. Walfingham Yod. 534. There was anci ently (fays Camden in his Notes upon Coins) a perfonal tribute called Capito (poll-money) imposed upon the poll or person of every one, of women from the twelfth, or from the fourteenth year of their age. Covel. ed. 1727.

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Pettifomer. See Polismonry.

Polgaram, (Polganim) is where a man marries two or more wives, or two 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.

Ponderate. It was a custom formerly to weigh sick children at the time of their death, and to balance the scales with wheat-bread, or with any other commodity which they were willing to offer either to God or his saints, but always with some money, and by this the cure was performed. Antiquitatem sanitati nummo se ponderatur. Cowell, edit. 1777.

Ponds. See Fish, Game, Parks and ponds, Waterfalls.

Pondus, Ponderage, Which duty with that of taxation, was anciently paid to the King according to the weight and measure of merchants goods. Cowell, edit. 1777.

Pondus Aegris, The standard-weight appointed by our ancient Kings.

Ponent. If a repeater be fixed by writ out of Chancery, then if the plaintiff or defendant will remove that plaint 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 new. New Nat. Br. 160.

Ponendim in allsitos, Is a writ founded upon the statute of 2 Edw. with and upon the statute of Articuli joser Charta, cap. 9, which statutes do shew what persons sheriffs ought to impanel upon affils and juries, and what not; as also what number, which fee in Reg. Orig. fil. 178. F. N. B. fil. 165.

Ponendum in bulliam, Is a writ commanding a prisoner to be bailed in caules bailable. Reg. Orig. fil. 132.

Ponendum agitum ad exceptionem, Is a writ, whereby the King will the precent justices, according to the statute of Wisf. 2. to put their fees to exceptions laid in by the defendant against the plaintiff's declarations, or against the evidence, verdict, or other proceedings before the precent justices. See Chancery.

Pene per habdum, Is a writ commanding the sheriff to take custody of one for his appearance at a day assign'd. Of this fee five fords in the table of the Registro Judicial, perbo Pene per vacuam.

Pontage. (Pontagium.) Is a contribution towards the expense of repairing and establishing of bridges. Wisf. 2. cap. 25. It may also signify tell taken to this purpose of shoals that pass over bridges. Stat. 1 Hen. 8. cap. 9. 22 Hen. 8. cap. 5. and 39 Eliz. cap. 24. Per pontagium clamant eft eft, de operibus pontium. Plaut. in Epist. apud Cæstrian. 14 Hen. 7. This was accounted one of the three public charges, of which no portion of what degree of power 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 necessitates; from which Ingulphus tells us, Nulli pifum lazarai. And Mr. Selden in his Notes upon Eulimenes writes, that Ne quidem episcopi, abhinc non munici immant. And Matt. Paris, anno 1324, tells us that in all the grants of privileges to monasteries, these three things were always excepted, proper publicum regni utilitatem, that the people might the better refit the enemy. Cowell, ed. 1727.

Pontunus reparadus, Is a writ directed to the sheriff, by willing him to charge one or more, to repair a bridge, to whom it is address'd. Reg. Orig. fil. 157.

Pools, Cutting their dams, what to bastis, 37 Hen. 8. c. 6.

Poot. It is not true, what some people imagined, that the Common law of England made no provision for the poor: The Mirror shows the contrary; but how it is now done does not appear. Per Fijiur justices. Bar. Rep. 450.

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 that is able to maintain them, 12 Rich. 2. c. 7. Impropiators shall be obliged to distribute a yearly sum to the poor parishioners, 15 Rich. 2. c. 6. 4 Hen. 4. c. 12. Provision to be made for the impotent poor, 10 H. 7. c. 12. 22 H. 8. c. 12. 27 H. 8. c. 25. 1 Ed. 6. c. 3. 3 & 4 Ed. 16. 5 Jos. 6 Ed. 6. 3. 2 & 3 P. & M. c. 5. 5 El. 3. c. 6. 18 El. c. 3. 35 Ed. 5. c. 7. 25. 39 Ed. 3. 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 thereto; 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 maintenance 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. Be it enacted by the authority of this 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 greatnes of the same parish 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 same, where one of them be of the commonwealth, dwelling in or near the said parish or division where the same parish doth lie, shall be called overseers of the poor of the said 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 setting to work the children of such 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 setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: And also aforesaid, to provide for theeducation of the said persons, and, or otherwise, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes improper, propriations of tithes, coal-mines or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit; a convenient flock of flax, hemp, wool, or otherwise, for the employment of the said poor on work: And also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor, and not able to work, and also for the putting out such children to be apprentices, to be gotten our of the said parish, or the ability of the said parish, and to do and execute all other things, as well for the doing of the said flock, or otherwise concerning the premises, as to them shall seem convenient.

2. Which said churchwardens and overseers so to be nominated, or such of them as shall not be let by sickness, or other just excuse to be allowed by two such justices of peace, 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 set down in the premises, and shall within four days after the end of their year, and after other things being done in and near the said parish, make and yield up to such two justices of peace, as is aforesaid, a true and perfect account of all sums of money by them received, or rated and alledged and not received, and also of such flock as shall be in their hands, or in the hands of any of the poor to work, and of all other things relating to their said office, and such sums 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 themselves 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
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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 if any such justices of peace do receive, 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 affie, as aforesaid, any other or other parishes, or out of any parish within the humble sum of 10 l. to pay such sum of money to the churchwardens and overseers of the poor parish for the said purposes, as the said justices shall think fit, according to the intent of this law. And if the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes not able to provide for themselves, as aforesaid; then they shall tax the said hundred, or the greater number of them, shall rate and affie, as aforesaid, any other or other parishes, or out of any parish within the said county for the purpoese 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 arrears, of every one that shall refuse to contribute according as they shall be affied, by diftres and sale of the offender's goods, as the sums of money shall be laid upon any account to be made, as aforesaid, rendering to the parties the overplus: And in default of such diftres, 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 sum, arrears and flock. And the said justices of peace, or any of them, to lend to the house of correction, 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 be 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 houses on the waste for the poor to inhabit, but not to be afterwards used for the increase of any other, on the pains contained in the 31. E 4.

Sect. 6. Provided always, That if any person or persons shall find themselves grieved with any fes or tax, or other act 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-seions, or the greater number of them, to take such order therein, as to them shall be thought convenient; and the same 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 old, blind, or impotent person not able to work, being of a sufficient ability, shall at their charges relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or greater number of the said justices of peace; and that if the said justices of peace shall be thought by any of them not to be able to do so, the same justices shall be bound to the said justices of peace of any county within this realm.

Sect. 8. Mayors, &c., of corporations being justices of peace, shall have the same authority within their limits, as justices of peace of the county. And every alderman of London shall do and perform for so much, as is appointed and allowed by this act to be done by such two justices 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 decline jurisdiction in any suit or cause of the said parish as lieth 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 the said churchwardens and overseers, and the committing to prison, as refuse to account, or deny to pay the arrears due upon their accounts; and yet nevertheless, the said churchwardens and overseers, or the most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall without dividing themselves duly execute all such acts and things as do appertain to the making and enforcing of all things to them belonging, and shall duly exhibit and make one account before the said head officer 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 forfeitures in this act shall be employed to the use of the poor of the same parish, by disfrees and sale, or in default thereof the offender shall be committed to prison, there to remain without bail or mainprize, till the said forfeitures 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 seions to be holden next: after the feast of EASTER next, and so yearly as often as they shall think meet, shall rate every parish to such a weekly sum of money as they shall think convenient, to as no parish be rated above the sum of 6 d. nor under the sum of one halfpenny, weekly to be paid, and so 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 so taxed shall be yearly affied by the agreement of the partitioners within themselves, or in default thereof, by the churchwardens and petty confablers of the same parish, or the more part of them, or in default of their agreement, by order of such justices or justices of peace as shall dwell in the same parish, or (if none be there dwelling) in the parishes next adjoining.

Sect. 13. And if any person shall refuse or neglect to pay any such portion of money so taxed, it shall be lawful for the said churchwardens and confablers, or any of them, or in default thereof, for any justices of peace of the said liberty, to levy the said money by disfrees and sale of the goods of the party so refusing or neglecting, rendering to the party the overplus. And in default of such refusal 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 same.

Sect. 18. Provided always, That whereas the island of Paulsgift in the county of Essex, being invinced with the sea, and having a chapel or church for the inhabitants thereof, and other conveniences for the sustenance of the same, as also the same number of persons as are situated within divers parishes far distant from the said island; be it therefore enacted by the authority aforesaid, that the said justices of peace shall nominate and appoint inhabitants within the said island, to be overseers for the poor people dwelling within the said island, and that both the said justices and the said overseers shall have the same power and authority to all intents, confederations and purpooses, for the execution of the parts, and articles of this act, and shall be subject to the same pains and forfeitures; and likewise, that the inhabitants and occupiers of lands there shall be liable to the same payments, charges, expenses and orders, in such manner and form as if the said island were a parish. In consideration whereof, neither the said inhabitants, or occupiers of land within the said island, shall not be compelled to contribute towards the relief of the poor of those parishes wherein their houses
or lands, which they occupy within the said faid, are situated, for or by reason of their faid habitations or occu- pancies, other than for the relief of the poor people within the said faid; neither yet shall the other inhabi- tants of the parifh wherein fuch houses or lands are situated, be compelled by reason of their refaincy or dwelling, to contribute to the relief of the poor inhabi- tants within the faid faid.

Sect. 19. And be it further enacted, That if any ac- tion of trefpafs, or other fuit, fhall happen to be accou- nted and brought againft any perfon or perons, for taking of any diftreff, making of any fale, or any other thing doing, by any of his perons, or fuch perons as his defendant in any fuch fuit or fuits, fhall and may either plead Not guilty, or otherwife make awory, cognizance or justification, for the taking of the faid diftreffes, making of fale, or other thing doing by virtue of this act, alleging in fuch awory, cognizance or justification, that the faid diftreffes, fale, trefpafs or other thing, wherein the plaintiff or plaintiffs complained, was done by authority of this act, and according to the rent, purport and effect of this act, without any expralling or rehearsal of any other matter or circumstance contained in this pre- fent act. To which awory, cognizance or justification fhall be admitted to reply, that the de- fendant did take the faid diftreffes, made the fale faid, or did any other act or trefpafs supposed in his declaration of his own wrong, without any fuch caufe alleged by the faid defendant. Whereupon the ifue in every fuch action fhall be joined, to be tried by verdict of twelve men, and the jury shall be afo ordained in the fentence. And upon the trial of that ifue, the whole mat- ter fhall be to be given on both parties in evidence, according to the very truth of the fame. And after fuch ifue tried for the defendant, or nonfuit of the plaintiff after ap- pearance, the fame defendant to recover treble damages, to the full defign of the wrongful vexation in that behalf, with his costs also in that part fufpended, and that to be afbled by the fame jury, or writ to inquire of the damages, as the fame fhall require.

Sect. 13 & 14 Car. 2. cap. 12. fect. 21. Whereas the inhabitants of the county of Lancashire, Chelfhire, Dor- beshire, Yorhshire, Northingland, the hillborough of Dur- ham, Cumbrell and Wigtownland, and many other counties in England and Wales, by reaon of the large- nefs of the parifhes within the fame, have not or cannot reap the benefit of the act of parliament made in the 43d year of the reign of the late Queen our lady, and of the poor people therein deferted by the authority afofayed. That all and every poor, needy, impotent and lame perfon and perons within every township and village, within the feveral counties afofayed, fhall from and after the paffing of this act, be maintaine, kept, provided for, and fet on work within the feveral and respective township and village wherein he or they fhall inhabit, or wherein he, she or they was or were lawfully fettled to the intent and meaning of this act, and that there fhall be yearly chosen and appointed, according to the rules and direc- tions in the faid act of 43 Eliz. mentioned, two or three fuch perons for every township and village within the feveral counties afofayed, who fhall from time to time do, perform and execute all and every the acts, powers and authori- ties for the neceffary relief of the poor within the faid township or village, and fhall lofe, forfeit and suffer all fuch pains and penalties for non-performance thereof, as by the limited, mentioned and appointed in and by the faid in part recited act.

Sect. 3. V. & M. c. 11. fect. 11. There fhall be pro- vided and kept in every parish, a booke wherein the names of all perons who receive collection fhall be re- giftered, with the day and year when they were fift tried, and the names of all perons the defendants under that neceffity: And yearly in Egller weck, or as often as fhall be thought convenient, the parishio- ners fhall meet in the veftry, or other usual place of meeting in the parish, wherein the book fhall be produced, and all perons receiving collection to be called over, and the reafons of their taking relief examined, and a new lift made and entred of fuch perons as they fhall think fit and allow to receive collection; and no other perfon fhall be allowed to receive collection at the charge of the parifh, but by authority under the hand of one juftice residing within fuch parifh, or if none be there dwelling, by the perons over or near the faid parifh, or in any order of the juftices in feiffions, except in cafes of pef- tential difeafes, plague or small pox, for fuch families as fhall be therewith infected.

Sect. 8 & 9 Wi. 3. c. 30. fect. 2. Every perfon who fhall be upon the collection, and receive relief of any per- son, or any of their perons, or any of their wife and children, or of fuch perons cohabiting in the fame house, fuch child only ex- cepted, as fhall be by the churchwardens and overfeers permitted to live at home, in order to attend an impor- tent and helpsful parent, fhall upon the fhoulder of the fwee of the uppermost garment, in an open and vifible manner, wear a large Roman P, together with the fift letter of the name of the parifh or place, wherein fuch poor peron is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overfeers fin. It fhall be refixed: And if any fuch poor peron fhall neglect or re- fufe to wear any fuch badge or mark, it fhall be lawful for one juftice to pefude the offender, and en- forcing his allowance to be abridg'd, unfupended or with- drawn, or otherwife by committing him to the houfe of correction, to be whipped, and kept to hard labour, not exceeding 21 days; and if any churchwarden or over- feer fhall refuse to give fuch poor peron, not wearing fuch badge, and be thereof convicted by the juftices of one of fuch cases, before one juftice, he fhall forfeit 20 s. by diftreff, half to the informer, and half to the poor.

Sect. 5 Geo. 1. c. 8. fect. 1. Whereas sometimes men run away, leaving their wives and children, and some- times women run away leaving their children, upon the charge of the parifh, although fuch perons have some caufes which fhould eafe the parifh of their charge, in whole or part; it fhall be lawful for the churchwardens or overfeers, where any fuch wife, child or children fhall be fo left, on application to, and by warrant or order of two juftices, to take and receife for much of the goods and chattels, and receive fo much of the annual rents and profits of the lands and tenements of fuch husband, fa- ther or mother, as fhall two juftices fhall order and di- reft, towards the defcharge of the parifh or place where fuch wife, child or children are left, for the bringing up and pro- viding for fuch wife, child or children; which warrant or order being confirmed at thefe fessions, it fhall be lawful for the juftices there, to make an order for the churchwardens or overfeers, to difpol of fuch goods or chattels by fale or otherwife, or fo much of them, for the purpoes afofayed, as the court fhall think good, and to receive the rents and profits, or fo much of them as fhall be ordered by the faid defoitions, of his or her lands and tenements for the purpoes afofayed.

Sect. 2. And the faid churchwardens and overfeers fhall be accountable to the juftices at the quarter-fessions for all fuch monies as they fhall receive, in excepting that no juftice of peace fhall order relief to any poor peron dwelling in any pa- rish till oath made of fome reasonable caufe for it, and that he had applied to the parishioners at veftry, or some publick meeting, or to two overfeers of the poor, and was refused and still fummons of two overfeers of the poor to flew cause.

Sect. 2. And any peron ordered to be relieved fhall be entitled in the parish books, to be relieved long as the caufe for fuch relief continues, and no longer. And if any parish officer (except upon fudden and emergent occasions) be ordered to the parifh and the fummons given to any peron not regiftered, he fhall forfeit 5 l. to be levied by diftreff and fale, by warrant of two juftices, to be applied to the ufe of the poor of the faid parifh by direction of fuch juftices.

Sect. 4. It fhall be lawful for the churchwardens and overfeers, in any parish, township or place, with the 6 P
and peace, power, rate, maintaining that houses, uniting пари(e)es, purchased or hired for the lodgings, permitted or employed. And if any poor person shall refuse to be lodged, kept or maintained in such house or houses, he shall be put out of the parish book, and shall not be intitled to receive relief from the churchwardens and overseers: And where any parish or township shall not so much as purchase or hire such house or houses, it shall be lawful for two or more such parishes, townships or places, with the consent of the major part of the parishioners or inhabitants of the said parish, township or place, where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof full given, and with the approbation of any justice of the peace dwelling in or near any such parish, township or place, signified under his hand and seal, to unite in purchasing, hiring or taking such house for the lodging, keeping and maintaining of the poor of the several parishes, townships or places so uniting, and there to keep, maintain and employ the poor of the respective parishes, townships or places so uniting, and to take and have the benefit of the work, labour or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained and employed. And if any parish or township sheriffs, or other officiers of the said parish, township or place, shall refuse to be lodged, kept and maintained in the house hired or taken for such uniting parishes, townships or places, he shall be put out of the collection book, and not intitled to alfe relief: And it shall be lawful for the churchwardens and overseers of any parish, township or place, with the consent of the major part of the parishioners or inhabitants of the said parish, township or place, where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof full given, and with the approbation of any justice of the peace dwelling in or near the poor in every parish, township or place, shall give, or to cause to be given, publick notice in the church, of every rate for the relief of the poor, allowed by the justices of peace, the next Sunday after the fame shall have been so allotted, as shall be deemed or reputed and generated or reputedly right, and the officers aforesaid or any other persons authorized to take care of the poor in every parish, township or place, shall give, or to cause to be given, publick notice in the church, of every rate for the relief of the poor, allowed by the justices of peace, the next Sunday after the same shall have been so allotted, as shall be deemed or reputedly right, and the officers aforesaid or any other persons authorized to take care of the poor in every parish, township or place, shall give, or to cause to be given, publick notice in the church, of every rate for the relief of the poor, allowed by the justices of peace, the next Sunday after the same shall have been so allotted, as shall be deemed or reputedly right, and the officers aforesaid or any other persons authorized.

Stat. 3. And if any churchwarden or overseer of the town, or other person authorized as aforesaid, shall not permit any inhabitant or parishioner to infict the said rates, or shall refuse or neglect to give copies thereof as aforesaid, the churchwardens or other person authorized as aforesaid, for every offence, shall forfeit and pay to the party aggrieved the sum of twenty pounds, to be sued for and recovered by action of debt, bill, plaint or information, in any of his Majesty's courts of record, wherein no effin, protection, or wager of law, or more county, riding, liberties or division, shall be sued, or recovered.

Stat. 17 Geo. 2. cap. 37.fell. 1. Whereas in divers counties great quantities of wafle and barren lands, and lands which were formerly fen or marsh ground, or covered with water, have been of late years improved or drained, and are now of very considerable annual value, and will furnish easements, and occasion great relief thereof, ought to be heard and pay a proportionable part of the yearly dividend for the relief of the poor, and to be subject to such charges, and in like manner, as other inhabitants and occupiers of lands, houses, tythes improper, proportions of tythes, coal-mines, and falseable underwoods, are by an act made in 42. Geo. 1. and his then wife to bear and pay a proportionable part of all other parochial rates; but great difficulties frequently arise in determining to what parish or place such lands belong, or ought to be rated; it is therefore enacted, That from and after the 24th day of June 1744, where there shall be any disputes or uncertainty in what parish or place such lands hereunto before improved or drained, or the same if made new, or any part thereof, ought to be rated; all and every the occupier and occupiers of such lands, or houses built thereon, tenements, tythes arising therefrom, mines therein, and falseable underwoods therein growing or hereafter to grow, shall be rated and allièd to the relief of the poor, and to all other parish or place rates within such parish and place which lies nearest to such lands in like manner and form, and subject to the same directions and regulations, as all other lands within such parish and place are by law liable to be rated and allièd thereunto; and if, on application to the officers of such parish or place to have such improved or drained lands, or any part thereof, or of auy disputes or disputes arising touching what parish or place such lands ought to be rated and allièd in, it shall and may be lawful to and for the justices of the peace for the county, riding, liberty or division where such lands lie, at their next general quarter-feelions to be held for such parishes or places, when it shall be made as aforesaid, and after notice given to the officers of the several parishes and places abutting upon and adjoining to such lands, and to all other persons claiming and interested therein, to hear and determine the fame on the appeal of any person interested, and at such feelions to cause such fees and assessment as aforesaid to be heard and determined to be made as aforesaid, and fairly and equally allièd in such parish or place as they shall find just and meet, and such determination and allotment shall at all times thereafter be final and conclusive to and upon the said several parishes and places, and all other persons whatsoever, as to the parish or place in which such lands and hereditaments shall lie rated and allièd to the poor, and all other parochial rates as aforesaid; and the said lands and hereditaments shall, at all times after such determination and allotment, be rated and allièd to the relief of the poor, and to all other parochial rates within such parish and parishes, and place and places only, to which they shall respectively have been so allotted and allièd.
and by virtue thereof, shall extend to, or be construed to extend to, or in any wise affect the boundaries of any parishes, townships, or other places, to any intent or purposes, other than for the purposes of rating and asfidding such lands, re mendments and prediamen of the relief of the poor, and to all other special rights within such parish or place to which they shall be allotted as aforesaid.

Sect. 1744. And it is hereby further enacted, That in cafe such 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 as shall be specifically directed to be paid and delivered over to such churchwardens and overseers, or one of them, as publick or other place in every parish, tow nship or place; and they shall and are hereby required to permit any person thereof or liable to be aforesaid, to enter the same at all reasonable times, paying for such inspection, and shall demand forthwith give up and deliver over such accounts, as by this act is directed: in either of the said cafes, it shall and may be lawful to and for any two or more justices of the peace or any of them, to commit him or them to the common gaol, until he or they shall have given such account, or shall have paid or tendered up such monies, goods, chattels and other things in their hands as aforesaid.

Sect. 5. And it is hereby further provided, That in case such 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 as shall be specifically directed to be paid and delivered over to such churchwardens and overseers, or one of them, as publick or other place in every parish, township or place; and they shall and are hereby required to permit any person thereof or liable to be aforesaid, to enter the same at all reasonable times, paying for such inspection, and shall demand forthwith give up and deliver over such accounts, as by this act is directed: in either of the said cafes, it shall and may be lawful to and for any two or more justices of the peace or any of them, to commit him or them to the common gaol, until he or they shall have given such account, or shall have paid or tendered up such monies, goods, chattels and other things in their hands as aforesaid.

Sect. 6. And it is hereby further provided, That in case such 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 as shall be specifically directed to be paid and delivered over to such churchwardens and overseers, or one of them, as publick or other place in every parish, township or place; and they shall and are hereby required to permit any person thereof or liable to be aforesaid, to enter the same at all reasonable times, paying for such inspection, and shall demand forthwith give up and deliver over such accounts, as by this act is directed: in either of the said cafes, it shall and may be lawful to and for any two or more justices of the peace or any of them, to commit him or them to the common gaol, until he or they shall have given such account, or shall have paid or tendered up such monies, goods, chattels and other things in their hands as aforesaid.

Sect. 7. And it is hereby further provided, That in case such 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 as shall be specifically directed to be paid and delivered over to such churchwardens and overseers, or one of them, as publick or other place in every parish, township or place; and they shall and are hereby required to permit any person thereof or liable to be aforesaid, to enter the same at all reasonable times, paying for such inspection, and shall demand forthwith give up and deliver over such accounts, as by this act is directed: in either of the said cafes, it shall and may be lawful to and for any two or more justices of the peace or any of them, to commit him or them to the common gaol, until he or they shall have given such account, or shall have paid or tendered up such monies, goods, chattels and other things in their hands as aforesaid.

Sect. 8. That it be lawful for two justices of the peace to appoint another overseer in his stead, who shall continue in his office until new overseers are appointed; and if any such justice shall after the 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 such other overseer 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 affets 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.

Sect. 9. 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 in his stead, or shall have any material objection to such rate or assessment as aforesaid, or any part thereof, or shall find him, her or themselves aggrieved by any neglect, act or thing done or omitted by the churchwardens and overseers of the poor, by any of 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 parith, townshifip or place, to appeal to the next general or quarter-feetions 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 shall adjourn the said appeal to the next quarter-feetions, and then shall 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 accounts, by an act intituled An act for the settlement of accounts, in the case of the estates of King William the Third, intituled, An act for appyling such estates in the hands for relieving the poor of this kingdom.

Sect. 10. Provided always, That in all corporations or franchises, who 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 think fit, to the next general or quarter-feetions of the peace for the county, riding or division wherein such corporation or franchise is situate.

Sect. 11. 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; be it enacted by the authority aforesaid, That upon all appeals from rates and assessments the justices of the peace (where they shall for the time being be 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 cafe, the said justices 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.

Sect. 12. 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 aforesaid and refusing to pay, may be levied by warrant of dif fectors 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 difsctors 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 certified 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 difsctors as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter-feetings 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.
Ingleby on poor rates, 1757.

Sect. 8. And to prevent all vexatious actions against overfeers of the poor, be it enacted by the authority aforesaid, That where any diffret is shall be made for any sum or sums of money justly due for the relief of the poor, the diffret itself shall not be deemed to be unlawful, nor that the party bringing it to be a trefper or trefperers, on account of any defect, or want of form in the warrant for the appointment of such overfeers, or in the rate or assessment, or in the warrant of diffrets thereupon; nor shall the party or parties distrainting be deemed a trefperier or trefperiers al mutis, on account of any irregularity which shall be done by the party or parties distrainting; 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 plaintiffs.

Sect. 9. Provided always, That where the plaintiff or plaintiffs shall recover in such action, he, he or they, shall be paid his, her or their full costs of suit, and have all the like remedies for the fame as in other cases of colts.

Sect. 10. Provided nevertheless, That no plaintiff or plaintiff shall have the action for any such irregularity as aforesaid, if tender of amends hath been made by the party or parties distrainting, before such action brought.

Sect. 11. And in case any person or persons shall refuse to pay to such overfeers as aforesaid, any sum or sums of money for the relief of the poor or they shall be legal for payment to such overfeers as aforesaid, it shall and may be lawful to and for the succeeding overfeers, 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 several accounts as aforesaid.

Sect. 12. And whereas perions frequently remove out of parishes and places, without paying the rates affixed on them, and other perions do enter and occupy their houses or tenements part of the year, by reason whereof great summes 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 affixed shall be removed, or which at the time of making such rate was empty or unoccupied, that then every perion removing from, and every person so coming into or occupying such same, shall be liable to pay to such rate in proportion to the time that such person occupied the same respect vely, in the same manner, and under like penalty of diffrets, as if such person removing had not removed, or such person so coming in or occupying had been originally affixed and affixed in such rate; which said proportion in case of dispute shall be ascertained by any two or more of his Majesties justices of the peace.

Sect. 13. And be it further enacted by the authority aforesaid, That true and full copies of all rates and affixements, hereafter to be made for the relief of the poor, be fairly written and entered in a book or books to be provided and kept by the churchwardens, and overfeers of the poor of every parish, township or place, who shall take care that such copies be written and entered accordingly, within fourteen days after all appeals from such rates are determined, and shall attact the fame by putting their names thereto; and all and every book or books shall be carefully preserved by the churchwardens and overfeers of the poor for the time being, or one of them, in some public or other place in every such parish, township or place, where to all persons affixed or liable to be affixed may freely refert; and shall be delivered over from time to time to the new and succeeding churchwardens and overfeers of the poor; and shall continue in their said office, to be preferred as aforesaid, and shall be produced by them at their general or quarter-sessions, when any appeal is to be heard or determined.

Sect. 14. And if any churchwarden, overfeer of the poor, or other officer of any parish, township or place, shall neglect or refuse to obey and perform the several or

ders and directions of this act, or any of them, when no penalty is before provided by this act, as shall afo warrant thereon; every such churchwarden, overfeer of the poor, or other officer offending in the premises, shall for every such offence, on oath thereof made within two weeks after the same shall be heard by him or them before an ass or more or at the Majesties of the peace, be held for the use of the poor of such parish, township or place, a sum not exceeding five pounds, nor left that twenty shillings, to be levied by d breads and false of the offender goods, by warrant from such justices, which sum shall be paid to the churchwarden or overfeer 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 overfeers of the poor within every township or place, where there are no churchwardens, shall have the power to perform and to order the acts, 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 pains and penalties for neglect or do anything contrary to the 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 overseers; their duty; and of compelling them to account.

Churchwardens of every parish. See the flat. 43 Eliz. c. 2. sect. 1. in the preceding division of this title.—The justices of peace, by the general words of this statute, have power to name overfeers in all parishes; and the court was of opinion, that it must extend as well to extraparochial places as all parishes, and general, and that no subsquent words shall controul the general words in the enacting part; and certainly all the poor shall be considered to extend to such places as well as to other parishes, when they are within the same micchipe, and shall be subject to the control of the justices of peace.

Most of the forens in England are extraparochial, and they are not subject to the control of the justices of peace. See the erect-church in Oxford, but they ought to maintain their own poor; therefore a perpetual mandamus was granted to the justices of peace to choose overfeers in the town of Ruffford, being an extraparochial place. 2 Med. 39. Poj£ch. 7 Geo. The King v. the inhabitants of Ruffford. Ruffford is an extraparochial place may be a towship or village. See Stra. Rep. 1003, 1071, 1143.

Four, three or two. Upon a motion to quash an indictment against B. for that he, with four others, being appointed overfeers of the poor of such a parish, refused to take upon him that office, &c. It was objected, that the statute directs the number of but of four, three and two with the churchwardens. And per Parker Cb. J. That is very true, though in many places more are appointed than four; for the act says four, three or two shall be nominated of the inhabitants, at the discretion of the justices (fili) they may nominate four, three or two; and the statute was for the most part in the very authoritative part thereof. Where more than four are added, they are not punishable by the act, and they can be only added as assistants. Per Pettow, the question will be whether the words of the act will be any more than directory, and a limitation of their authority. In most of the parishes about London there are more than four, wherefore he said we need not depend upon this point; but the indictment was quashed for another fault. MS. Capi, Trin. 11 Ann. B. R. Anon. 16 Vin. Abr. 415.

But in Hil. term 34 Geo. 2. it was determined by the court of King's Bench, that no greater number than four can be appointed. See Barrac's Rep. 445—453.

Substantial householders there. The appointment of overseers must file them substantial householders. Stran. 1261.

It was moved for a mandamus to J. H. and J. T. justices of peace in the county of Dorset, &c. to nominate two substantial householders to be overseers of the poor of the parish of Charford 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, and appointed Mr. F. in her stead; and the 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.

413. 149. 1. See for instance Ch. 1. The nomination 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 flit; but (because the justices had done wrong) the other woman) he directed that they should apply to the justices to have another nominee; and if they refused, then to apply to the court for a mandamus the next term. MS. Cafets, Pach. 10 Ann. B. R. 16 Vin. Abr. 445.

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 disallow 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. Carth. 101. Mich. 2 W. & M. B. R. The King v. Moor.

[Table in Eayer text, or within one 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.

Friday 4.

An appointment of overseers is good, tho' not made within this one month after Easter. Stran. 1725.

And many other Charities in England and Wales.] See 12 14 Car. 2. c. 12. sect. 21. in the preceding division of this title.—In trepan a special verdict found this statute, and that the parish 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 serjeant 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 the statute; and to this Holt serjeant well said, he would see the said precedent before they gave judgment; by which adjournatur. 2 Lev. 142. Trin. 27 Car. 2. B. R. Stillington 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 in the statute. Ibid. Prom. Rep. 401. pl. 427. Trin. 1755. S. C. by name of Stillington v. Norton, where Hale J. said, by the words it seems to be intended for all counties in England, because the words are (or other counties;) but Serjeant Hopkins cited the judgment in C. B. in case of Wills and Bonner, between Chipping Campden and Brad Campden in Chipping Campden in Gloucestershire, where this act is extended to no counties but those named. Rid. 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 so 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 mean the poor boroughs would be charged with poor, and the towns where good effects lived, but perhaps no poor, would be at no charge at all. But 2 Batt. 486. pl. 44. in marg. there is a note, That in the case of the inhabitants of Staketone and Delting, Trin. 11 Ann. B. B. it was adjudged by Parker Ch. J. and the whole court, that by virtue of this act the poor may exercte the powers given by 43 Eliz. and this act in all extraparochial places containing more houses than one, to come under the denomination of a vil or township. And in the case of Hiniam and Churcham parishes in Gloucestershire, Hill. 1738. Lea Ch. J. cited the 41st case of Staketone and Delting, in which it was held, that this statute extended by example 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 ballards, who are provided for by other statutes. See 117. Hill. 5 Ann. B. R. in case of The parish of Badsworth v. The township of Dunmby.

[Five or more overseers of the poor] The court held, that this clause plainly extends to towns and villages in extraparochial 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, etc. in counties) and not (in parishes); and towns and villages in extraparochial places are plainly within the words, though not directly within the view of the act; and though there be not officers appointed in extraparochial places, yet the justices ought to do it upon complaint. MS. Cafets, Trin. 11 Ann. B. R. The Queen v. The inhabitants of Delting. 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. The statute of 16 Geo. 1st. flatting this account, cannot be delegated to any other. MS. Cafets, Pach. 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. 17 l. 11 d. 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 vestry 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 Young was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay Young; &c. that they had refused to grant the warrant; And per curiam, There must go no (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 vestry to dispence with the statute. Stran. 932.

Neglect in the office.] If an overseer does not provide for the poor, he is indictable; and if he relieves the poor when there is no necessity, it is a misdemeanor. MS. Cafets, Pach. 3 Ann. B. R. Tawny's cafe.

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 extraparochial places, because they have no church to meet in. Per cur. & Wad. 40. Pach. 7. Geo. in case of King v. The inhabitants of Rofford. If any of these officers be convicted of any of the penalties in this act; the other must levy it. MS. Cafets, 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 had been adjusted, and the overseers refuse to pay the balance, they cannot be committed immediately, but a warrant must issue to distraint them, and upon return thereof there may be a commitment. MS. Cafets, Pach. 9 Ann. B. R. The Queen v. Turner & al'. 16 Vin. Abr. 410. 6 Q. 10
The justices cannot commit an overeer of the poor for bringing in an account to which they object, but they ought to hear it, and to strike out what is amiss in it, and balance the account. J.S. Cofie, of Devon offf. Lent 1799. Coram Kyng Ca. 1. Hatcbe's cafe. 10 Tit. 441.

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 his several payments, and refused to give a particular account, or produce his book, &c., and they believing this to be no account according to this statute, and the defendant refusing to give any other account, therefore they committed him to be detained till he shall make a true account. And upon a baldus he was here discharged. Case. There were also several writs of habeas corpus had not the authority to commit in this manner by this statute, for that an account was conflituted to have been rendered, &c. Story. 395. T. & M. B. R. The King v. Carrack. 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, 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 to be against the disbursements and allowance thereof, which the court will dispose of in regard to it, and being in the cafe in Salt. Which was said to be by two Justices without quam anna. Sed per casum. 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. Story. 593.

3. Of the poor rate, tolls, and what shall be liable there- to; and of taxing alter parishes in aid of it.

By taxation of every inhabitant] See Stat. 13 Eliz. c. 2, fect. 1, 3, & 17 Geo. 2, c. 38, sect. 12, in the first division of this title.—Allotments for the poor ought to be made according to the visible estate 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 dwell, and not for any other land he hath in any other place or town paid by Hutton and Corde J., to have been referred to all the judges of England upon a reference made to them, and upon a conference by them had together. 2 Biff. 354. 9 Car. in Sir Anthony Eary's cafe.

Rent is no founding rule for making a poor rate; for circumstances may differ, and there ought to be a regard ed statute &c. Faulcon. 457. T. & J. 10 B. R. The King v. Justices of peace of the precinct of Catherine church, Norwich. The Sessions upon petition stated a rate may be made new one themselves, or order the churchwardens and overseers to make a new one, they having it in their discretion to make a rate at folioth, or rate per person, of the churchwardens, &c. and a new one. 2 Salt. 483. Mich. 10 B. R. The parifh of St. Leonard Shoreditch's cafe. The churchwardens and Overseers may make a rate of themselves; per cur. 2 Salt. 531. Hill. 2 Ann. B. R. in Tavency's cafe. H. took into a house in the parifh of D. on the third day of December, he was rated as an inhabitant, and was disrated for a quarter's rate the Christmas following but the dittoes was taken before Christmas on a general warrant made for the whole year: and in releaving it was ruled upon evidence by Hoy Ch. J. 18. That if several houses be 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

cenement be divided by a partition and inhabited by different families, then the owner in one, and a stranger in another, there are several tenements severally rateable while they are thus severally inhabited, but if the stranger and his family take up and occupy one of the tenements. That H. could not be rated for the whole quarter, for poor rates are to be assessed 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. Tavole. When goods are rated, it ought to be according to the value of lands, who goods of the value of 100/. is rated 5/. per annum, as lands are, and the person must be charged only in the place where the goods are at the time of the assessment; for if he has no goods where allotted, if disfrained he may have an action of trespafs, &c. Dall. 325. cap. 73.

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 parifhs of Southwark, and per cur. it was granted; because against this there can be no objection. In the usual course of an action at fi&; and all the precedents that live in the same close, which is a fourth part of the town, pay it. 3 Keb. 573. Hill. 37 Cor. 2. B. R. The parifh of Southwark v. The mayor of Chichester. A parifh who lets his titles to the parishioners may be rated upon the poor rate; for the letting is but an agreement with parishioners to retain it to the church, and the parifh here has a modus for his titles; though it was objected that the parishioners were occupiers, and for the parifh not taxable. MS. cafes, Toph. 7 Ann. The Queen v. Barth. Toph. ought only to be contributory who were where the church was, and none elfe; for Percy J. Pow. the names of all occupiers of the parifh, and to make the inhabitants ofWere v. Petit executor of Town. A feif of lands demised the fame to B. referring the yearly rent of 101. A. conversament with B. that he should quietly enjoy the land, and to indemnify him against all charges and taxes whatsoever to be imposed upon the fad lands, except titles. B. entered, and was pollified, and the clarke of parifhs of the parifh, and of the parifh where the parifhioner there is a lease, and of which A. was an inhabitant, made a poor rate, and B. by reason of the fad lands was charged with such a sum of the fad rate which he paid, and brought a con- vention against A. and affirmed the breach, in that A. did not indemnify against the fad poor rate, &c. And after argu- ment on both fides the court unanimously agreed that A. did not indemnify against the fad charge, and it is given judgment for judgment for A. the defendant. Gib. 297 to 299. Trin. 5 Geo. C. B. Cafe v. Stephens.

The Doctor agreed with several of the parishioners to take for much more for his titles, and made a leave to F. The Doctor was rated for the titles to the parish levies, who appealed; and the matter being found specially, the quer- rant of advantage is given to the inhabitants; for they have to their full value for their titles; otherwise had it been a contract for years. Part's Settlements 104. pl. 140. The Inhabitants of Lambeth v. Facieth, leave of Dr. Hutton.
The defendant being affiled towards the poor rate for 30 acres, as vicar, appealed to the fellows, where he is jointly discharged. But by the court; as vicar he is chargeable by 43 Eliz. and the fellows have only power to order, but not discharge; and the order of the fellows is quashed. 

Rev. 77.

When the poor rate agrees that the tenant shall retain 3 acres, yet the rate for them must be upon the parson.

Can. 259.

All things which are real and bring in a yearly revenue be rated and taxed to the poor. Shaw's Parochial Law 62.

In a motion to conform a tax laid by the justices of a town on a toll of the corporation of W., for a rate to the on, 

Hill Ch. J. said, that on a reference to him by the partizan, he was of opinion that the toll was not exempt but chargeable, too part of it to maintain mayors; and per cur. A mandamus was granted to the mayor and justices to execute the order, Hill. 354. 

Can. 2. B. R. The corporation of Weymouth, in mayor.

Note; It hath been lately resolved by the court, that such rents are liable to be paid the poor rates. 

Can. 62. 5 Jac. B. R. Ass't.

Hospital lands are to be charged to the poor as well as 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 their neighbours. Per Holt Ch. Justice. 2 Salt. 579. 

An. B. R. Ass't.

The question was, whether a house converted into a coach house, and used for no other purposes, was rateable for the poor rates; the court said, they never knew it, and denied them to have charge; and after the order was altered. 


A farmer is not to be taxed to the poor for his necessary farmack according to the lands he holds; but if he has a per-abundant Rock, i.e. more lands than the require, shall be tax’d for that. 

Journ. Law Case 233. cites loc. 263. 264.

Yet it is a quare fill if a farmer is to pay a rate or x for Rock upon land. Ibid.

A foopkeeper shall be charged to the poor’s rates for e goods, &c. In his shop. 

Journ. Law Case 273. cites loc. 263. 264.

On a motion to quash a poor’s rate made at the quarter-sessions in Marthorough, because it was affiled for trade, the corporation would not affect the toll of their market and parishes; and the officers would not bear the rate at their fellowships. Per cur. It will be inconvenient to quash poor rates; but you may take a mandamus to fey you according to law, as in the case of The town of Cambridge MS. cafe. 16 Vin. Abr. 426.

In the case of the governor and company for fishing and against Richardsons and others, it was determined by the court of King’s Bench in Milburn, term 3 Geo. 3, that a lease of lead mines, where no rent is receiv’d ther from a certain proportion of the ore to be raised, is not rateable to the poor, under the flat 43 Eliz. 

As to taking other parishes in aid, see flat. 43 Eliz. 3. 4. 309. 3. 2. Geo. 3. in the first division of this title.

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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 cease, such allowance is to cease also. *Jact. Law* 234, cited

By the parish is not able to maintain its own poor, two justices may tax any other parishes within the hundred towards their relief, and if the hundred be not of ability to relieve their parishes, the justices in their felions may tax any other parish or parishes within the county. *Shaw’s Pratf. Prac. 43.*

An order was made by the justices of the borough, for the parishes of St. Peter’s to pay to the officers of St. Mary’s the sum of 20s. weekly, until we the said justices shall see fit to order to the contrary. It was objected, if, That it does not appear that the parish of St. Mary’s is over-barrettined with poor, but over-ruled; for the order follows the words of the statute. *208.* It is said, that they are justices of the town and borough, and it appears upon the order, that the parish of St. Mary’s is not within the borough, but not within the town and borough. But per cur. they are justices of both, solely. The order is, until we shall see fit to order to the contrary, where the all never gave the justices such an authority, and it is in effect making a perpetual order; for if one of the justices can order the rates of another order after it is made, the said justices shall see fit to alter. And it was qualified per cur. for the last objection. *Pear’s Settlements 121. pl. 165. Pech. 12 Geo. 1. The inhabitants of St. Peter’s and St. Mary’s in the borough of Marlborough.*

The parish of H. and a vill called S. was time out of mind within the recog. of H. But there is 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. *Richardson* Ch. 3. held clearly, that this is a parish within 43 Eliz. and that the overseers, &c., might assess it to the relief of the poor; and the finding that from Henry the VIth’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 use, and so. And per tot. cur. Judgment for the plaintiff. *Hact. 93. Hilton v. Parish. 4* *S. C. adjourned.* *Pett. 53.* cited S. C. Dalt. *Jact. 219. cap. 73.* cited S. C. *Slaw. Parish Law 198. cited S. C. Hact. 208. S. C.*

*Cit. 92. pl. 17. Mich. 3* *S. C. adjourned. that this is such a parish as is chargeable for the relief of State Domingharn, and not for the poor of Histley; and though by the finding it should not intended to be a parish before Henry the VIth’s time, yet being found that it was a church then, and that there were churchwardens there, it is a parish within the statute, though ‘tis be but a parooping parish; for being in use so long before, and at the time of the statute, the statute appoints that the churchwardens and these four overseers joined with them shall, &c. Now no churchwardens of H. are churchwardens of S. and so 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. P. As to Tattenham and Hasfield, where for 50 years or thereabouts, all the time of running the statute, and ever since, T. was commonly reputed a parish of itself, and the inhabitants there do take a churchwarden, 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 since the year of the parish of T. was parceled of the parish of H. and never interfered by the legal act, and that the tithes of T. have been time out of mind paid to the parish of H. who always used to find a curate at T. and that there is no parish at T. 90. Shall be charged by itself, and for their own poor only. *Cor. 39. 395. Hill. 10 Cor. B. R. Nicolas v. Walter Parker. Shaw’s Parish Law 208. cited S. C. Hact. 317. cited S. C. Parishes in reputation only are within the other parishes are, if the usage of such parishes to choose officers has been commonly acknowledged without interruption; but otherwise the overseers and collectors of the mother church are only within the statute; per *Maugham* Ch. 3. and *Doddridge* J. But *Houghton* contra as to reputative parishes being within the statute. *2 Rel. 1666. Pech. 18* *Jact. B. R. Wedder v. Walker. Hact. 437.* cited S. C. *Hill. 650. cap. 73. cited S. C. Shaw’s Parish Law 209.*

There were two villas in one parish, which had used severally to maintain their own poor, and now there be overseers made of the whole parish, they were rated together. The question was, whether having been rated out of mind to pay severally, they might now by the statute of 43 Eliz. § 2, be rated together? *Per Hole* Ch. 3. If there be no chapel within the will, where the church does not find, it is not sufficient to make it a reputed parish within the statute of 43 Eliz. *Frem. Rep. 451. pl. 527. Trin. 1755. Sholington v. Norton.*

The parish of St. Botolph without Algate lies in two counties. The inhabitants of the middle, and hath one churchwarden and several over-seers, and the parochial rates are severel. 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 county court made upon each division as a feveral parish, and ordered accordingly. *Raym. 475. 477. Mich. 34 Cor. 2* *B. R. the parish of St. Botolph without Algate.* *Pear’s Settlements 121. pl. 117. cited S. C. Dalt. *730. 253. cap. 73.* cited 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 evidence was, that there were but two churchwardens, two over-seers of the poor, that making marriages, 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, evidence was, that in the reign of Edward III. then was a publick chapel there, and divine service read in the time of making this statute, that they had formerly different 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 the over-seers and churchwardens held to be a vill in the parish of B. 4 *Mol. 158. Mich. 4* *H. R. Rudd v. Fother.* *Pear’s Parish Law 208. cited 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 chapel, 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 a reputed parish 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. Mich. 4* *H. R. Rudd v. Morton.* This was the case of Datchet and Stratfield.

A chapel’s having sacraments only, makes it not independent of the parish, but it must have other badges, as fesipitals, &c. *Per cur. 12* *Mol. 504. Anon.*

On the flowering cause against quashing two orders, &c. An original order of two justices, made for taxing, raising, and relieving the inhabitants of the tithing of Millend, in aid of the parish of St. Peter’s, Car. I., in the county of Surrey, and the order of officers concerning the collection of the same, it was questioned, whether it was sufficiently stated that both these places (viz. Millend and St. Peter’s) lie within the same hundred: Which is a circumstance officially necessary to be ascertained, in order to give the two justices any jurisdiction in the case. *Fors. 43* *Eliz. 5*
4. Of the remedies for recovery rates; and of setting aside rates.

See fl. 43 Eliz. 2. 2. 4. 13, 19. in the first division of this title.

Holc Ch. J. answered, that a man could not be disfrained 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 disfrain could not be taken for a quarter's rate before the quarter was ended; but the jury said, the cuftom was otherwise. 2 Sufl. 533. Tit. 3. Ann. Travey v. Tolbot. 6 Med. 314. S. C. and 1st. Tit. 3. Ann. Ch. I. He said it must be done before the beginning of the rate; and if the rate was not paid, he must be disfrained for his whole year. The court discharged the order, and affirmed the cuftom.

4. In the case of a rate, it was said that the party who was sued might distrain by warrant from the juflices as well as in the same rate; but if he removed out of the county, he agreed the remedy failed. So he gave way to the ifage in that point.

It was said, that a warrant to distrain for a poor's rate ought not to be granted before demand made; for the ift ought to be only a confirmation of the affiufon for the poor, and afterwards upon refufal, &c. a new warrant is to be made for disfrain, &c. and Helc said, that if it was granted, it was found, that if it was granted, it was found, that if this was the practice, the parties were out of the rate, and the overfeers lay out of the county; and then they agreed the party was disfrained.

As to setting aside rates, see fl. 43 Eliz. 2. 2. 5. 6. in the first division of this title. — Upon an appeal from a poor rate, the juflices refused to hear the appeal, because it was not made at the next quarter-julions. But per cur. The party grieved may appeal at any felfions; the juflices may not have power to alter the rate at discretion, but they ought not to refuse to hear the appeal. MS. Cafes, Mich. 8 Ann. B. R. The Queen v. The inhaubits of St. Giles.

T. P. and S. being overfeers of the poor, got their account allowed by their juflices. The parish appealed against it, and the juflices for this account, and then directed a re-examination of the matter to the fame two juflices. This order being removed, it was object'd, that there was a matter delegated to them for this purpose, and they were to determine the matter in question. Per Parker Ch. J. The overfeers have four days time to pafs their accounts, and they may go before any two juflices for the doing it; till the time is paff there is no compulfion ufed, but if this time is paff, the parish may go before any two juflices, and when they have enter'd upon the examination, no juflices is afterwards to interfere; and when this matter comes to the felfions, they are to take

The churchwardens and overseers of the poor, by warrant from any two juflices of the peace (counr. 1.) may levy the tax to be distrain and sale of goods where any warrant takes

refuses payment of the fund he is alledged; and if there be no disfrain whereby the fame may he levied, he shall be comely sued on the pension, to be cured at general rate.
take such order therein as to them shall seem convenient, but need not finally determine. MS. Coffin, Hill 10 Ann., B. R. Tawneynd, Parson and Smith's cafe (overseers of the chapel.)

There are four adjacent towns within the parish of Banbury, and there is an overseer within each town, and an overseer also within 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 collect and pay the rates within their town, or of those towns, to which they are tenants of lands in one of these towns lives in the borough, and is afflicted 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 farfugle for the poor within the borough, but the overseers of the towns wanted money, for the relief of the poor within the towns, tho' the poor within the towns were less than those within the borough, and upon this the justices ordered, that there should be a distribution made; and this order with others being removed, it was moved to be quashed by North and Levius, but confirmed; and th'o' the statute of 16 Car. 2, was cited, the justices, &c. that it was not to be within that statute, it was not agreed to be within that statute. Sin. 258.

Mich. 2 Jus. 2 B. R. the cafe of the borough of Banbury and the adjacent towns.

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 some orders, &c. that it was a poor's rate, it shall be quashed, and the court refused to supply this defect in the order by affidavit. Camb. 133, 134, Trin. 1 IV. & 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 justices, in which several were not taxed for their personal estates, (which was erroneous,) but the whole lay on the real estates of the parish; on which several of the inhabitants appealed to the seftions, 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 estates, which rate was confirmed by two justices. But in the new rate there was a great inequality, the real estates being rated in proportion ten times more than the personal; for which several of the inhabitants appealed again to the seftions, where another order was made to discharge the said rate. And now these two orders of seftions being removed by certificate into B. R. it was moved to quash them; because the seftions had ordered the said rate to be discharged, and cannot set aside the whole rate. Sed per st. cur. 

Sure the justices at seftions upon an appeal by particular persons grievous, may, if they see reason, set aside the whole rate. The justices have a large power, and in both these cases, either on the first rate where the personal estates 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, &c. and make a new one, as was done in this case; wherefore those two orders were confirmed. 12 Med. 212. Mich. 10 IV. 3 B. R. The King v. The inhabitants of St. Leonard Shotditch.

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 & 10 Med. 10. Mich. 7 Geo. 2nd. Digby churchwardens v. Banbury.

If the rate be illegal, the justices may refuse to sign it, but as to the forms or parties afflicted 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 record of a premonitory mandamus, and then an attachment, in order that the parties grieved might appeal, cited per cur. MS. Coffin, Mich. 8 Geo. B. R. in case of The King v. Reacher.

A rate that is of itself good, may be quashed, where it says it shall be a landing rate; per Earl. Poor's Settle-

ments 23, pl. 33. in case of Shagforth v. Northbury in Dronfield.

5. Of relieving, and ordering maintenance for the poor.

See Jat, 43 Eliz. c. 2. sect. 11, 13. 8 Will. & M. c. 11. 8 & 9 Wil. 3. c. 30. in the first division of this title.

Exception was taken to an order of the justices made against the parish of Stratton, because the justices ordered them to keep a woman, being poor, the cottage wherein she lived, being uncertain whether in this will or another; but the court refused to quash it, tho' it was not aversed that she was improper, because in these cases the courts do a liberty and discretion. 2 Ch. 37. Pech. 16 Car. 2. B. R. Wis's. cafe, 1. 

An order of justices of peace for the maintenance of a poor woman was confirmed, though it appeared that she was able of body to work; but the justices of the peace are judges of that. Ven. 69. Pech. 22 Car. 2. B. R. Wis's. cafe, 2.

An child left in Christ Church hospital; upon complaint of the wardens of the hospital two justices 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 though there was nothing in that. 2 Sal. 485. Trin. 11 W. 3 B. R. Christ Church's hospital case.

An order of justices was made for relieving a woman and four poor children, until further order, but did not so forth the case was indigent; it was quashed for the law made and bad for the other, which should have been during her poverty. 10 Med. 220. Hill. 12 Ann. B. R. The Queen v. Manchester inhabitants.

It was moved to quash an order of seftions which ordered that the overseers of Monks-Rift Borough should pay the rates ordered by the justices for the poor's case. 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 pauper therein. Quashed wif. Poor's Settlements 8 pl. 17. The Queen v. The inhabitants of Monks-Rift Borough.

Two justices made an order for the overseers of the poor to pay 21. per week to Elizabeth Reddish, but it was objected It that it is not said that she is poor and impropert; otherwife 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 doe ease. Poor's Settlements 27 pl. 30. The Queen v. The inhabitants of Manchester.

An order to continue the weekly pay to R. C. and all the arrears, till they found 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 justices. Shaw's Parish Law 200.

An order of justices of peace, willing the churchwardens to pay to a friarener s. 4. due to him for drawing indigent persons, &c. of all the old trades, was quashed, as being nothing out of their power; but the way had been to order a parish rate for levying so 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 friarener against the churchwardens. 12 Med. 417. Mich. 12 W. 3. B. R. Ann.'

6. Of parents and children being obliged to maintain each other.

See Jat. 43 Eliz. c. 2. sect. 7. and 5 Geo. 1. c. 8. under the first division of this title.
POO

POOR

If a man marry a grandmother, and has an estate with her in marriage; for this estate he shall be charged to be contributory towards the relief and maintenance of the grandchild within the meaning of this statute, but otherwise it shall be, if he has no such estate or advancement as his marriage with her. Per Whitleake and Croke J. But per Croke J. he shall be charged with the keeping of the grandchild during the life of the grandmother; and if the diet, he shall not be charged after death. 2 Bulst. 346. Hill. 7. Car. B. R. in case of the city of Westminster v. Gerard. S. P. Juf. Caf. Law 236. S. P. Nill. Juf. 534. But if the grandmother has no means, and the marries with one that has no means, he shall keep with the keeping the child. 2 Bulst. 346. S. C. So if the husband becomes of ability after marriage, the grandmother having no means at the time of the marriage, he shall not be bound to keep and provide for the child. Per Croke J. clearly. Divit. Dott. Juf. 256. cit. 73. cites S. C. Ibid. 250.


[But in the case in Bulst. 346. it does not appear that the grandmother was dead, nor is there any mention of the justices differing in their opinions.]

A son-in-law was obliged by an order to maintain his wife's mother, having an estate with her at the intermarriage. Per cur. He is not within the words of the statute, nor within the meaning of it; the statute extends to those persons who have by the law of nature to relieve their parents, and if the persons were free and married, therefore this law was made to inform them to do that which by the law of nature they were obliged to do. Peri's Settlements 91, pl. 123. The King v. Manden. 2 Shaw's Pratts. Inf. 57. S. P.

It was moved to discharge an order made against a woman covert to keep a grandchild of hers, because a female covert was not bound by such an order. Roll Ch. J. anwered, that the husband is to keep his wife's grandson by the statute: but in regard that the husband is not charged by the order, but the woman who is covert is only charged; therefore let the order be quashed. Sy. 283. Trin. 1651. Cott. 374. Cott. 54.

An order of seffions was made, that the defendant should pay 21. a week towards the support of his father till the court should order the contrary, which was held good, because it was indefinite, and no set time limited, and if an estate happened to fall to them they might apply to the court, and if the defendant was a woman another time was limited. 2 Sall. 534. Juf. 5 Ann. B. R. Jenkin's cafe.

And order that the grandfather should keep the grandchild, the father being living, but unable to do it, and also to pay so much money for the time paff, while he was chargeable as well as for the time to come, was allowed good per cur. Msn. Cafes, Mid. 6 Ann. B. R. The Queen v. Mander, 334. 2 Sall. 534.

An order of two justices to compel Davison to do for such a week for the maintenance of his wife and family. It was moved to quash the order, for that the justices have not jurisdiction in this case, it being properly civil, and belonging to the spiritual court. And that nothing but according to the statute, is to be ordered, if not jurisdiction in this case, but this is not jurisdiction. If a man run away from his family, he may be punished as a rogue and a disorderly beggar; but whilst he continues resident, they cannot charge him in this manner; and quashed the order. 11 Mid. 268. Hill. 8 Ann. B. R. The Queen v. Davison, 334. 2 Sall. 534.

An order of justices was made, that the father-in-law should maintain his fon's widow. But it not being set forth in the order, that the father was of sufficient ability, in which case only the act enables the justices, Ur.
Potter. In the circuit of justices, is an officer who carries a white rod before the justices in office, so called a portando virgum. Stat. 13 Edw. 1. cap. 41. See Utters.

Potter's door in the parliament house, is an officer belonging to that high and honourable court, and enjoys the privileges accordingly. Camp. Juris. 211.

Pottergroat (Pottergroat, in Sixon perrotje), that is, where well portus praeficiit. Signifies with us a magistrate in certain sea-coast towns; and as Camden, in his Brit. pag. 325, faith, The chief magistrate of London was to call his name from a chair of King William the Conqueror to the same city in these words: William King, greet William Bishop and Godfrey Pottergroat, and all the burgers within London, French and English: And I grant you, that I will that you all bear your sea-worth ye were in Edwards day the King; And I will that each child be his father's eye, and I will suffer, that any man you any strange bed. And God keep you. Ex libro pervertudo. Instead of the portorget, Richard the First ordained two baillifs, but presently after him King John granted them a mayor for their yearly magistrate. And the name Camden, speaking of Maitland in Kent, says, Immuntates ploratis Regina Elisabetha fert acceptas, quas in ipse annum prominent instituta pro perrotgroat quem primum habuit. 

Porticus. A little porch or arch built over the tombs of dead men. Leg. Hen. 1. cap. 83.

Portifolium. The ecclesiastical ensign or banner provided of old in all cathedral, and most parochial churches; ornamented with the front of any procession, &c. Cell. edit. 1727.

Portion. Is that part or share of a person's estate, which was given or left to a child. Jan. If a man makes a voluntary settlement for the portion of a daughter by his former wife, and then takes a second wife, and fettles the same land for her jointure, without notice of the voluntary settlement, it will devolve to the second wife, which the refuses; the daughter shall have the other lands till her portion is rai'ded. 1 Vern. 219. Ep. Adv. 221.

If by marriage-fettlements lands are limited to the husband 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 there be issue male, which survives the father, and then dies without issue, a daughter shall have the portion. 1 Lev. 35.

If A. after the death of his wife makes a settlement for raising 500l. for each of his younger children, and afterwards gives interest of the said children by the second wife shall have the same portions. 1 Vern. 335.

If land is charged with portions, the heir cannot give personal security for them in discharge of the land. 1 Vern. 338.

No part he be allowed to pay them, before the time limited by the settlement, viz. full age, or marriage. 1 Vern. 338.

If a man gives a portion to a daughter to be paid at the age of 21 years, and the marriage, and dies before; it shall be paid to her husband, or her executor. 2 Ca. Ch. 94.

If A. by marriage-fettlements makes a provision for daughters of 500l. a piece, to be paid at 18 or marriage, and if any of them die before, the survivor to take the whole; and afterwards fettles other lands for the payment thereof, at the age of 21 or marriage, and that there shall be no survivorship, this controul 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 for that purpofe in the life-time of the father. 1 Sal. 159. 2 Vern. 335. 2 Fer. 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, of

money. 1 Vern. 762. Per Conc. 1 Col. 159. 2 Ver. 657. Rep. S. Geo. 2, 2, 22.

If the term is to raise portions for daughters, and the inheritance depends to the heife; Chancery will prevent the merger of the term. 2 Fer. 91, 206.

So, if one has a power to raise portions for children, and by death charged, and upon land, but by the eviction of part, the residue is not sufficient; the land may be decreed to be sold. 1 Ver. 311.

Th' he adds, that for the raising them, the trustees shall take all the rents and profits; for that does not retrain the general charge. 2 Ver. 311.

If the term is 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 rai'd, tho' the father dies without appointment. 2 Ver. 665.

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 50l. per annum in the interim; tho' the mother dies without a son, the term shall not be decreed to be sold for the daughters portions; for the other contingency, if they are not otherwise directed by the will, it cannot happen, that the life of the father. 1 Sal. 160. 2 Ver. 656, 657.

So the 50l. per annum shall not be decreed to the daughter, or her husband; for the father shall not pay maintenence out of the profits of a term, not to commence till his death; and therefore it must be intended of maintenance. 1 Sal. 420.

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 security, approved of by a master in Chancery, with the consent of the guardian, and are afterwards sold; the land of the heir shall not afterwards be charged. 1 Ver. 337.

If land is charged with 500l. for A. and the trulle raises the sum, and gives a judgment to A. for it, and then dies insolvent; the lands shall be discharged. 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 commencement of the term, to be paid at the age of 21; neither the principal or the interest shall be raised, till the term commences in possession. 2 Ver. 761. 1 IV. 449.

If the portion is to be paid by the personal estate, and if that is not sufficient, by the rents and profits of the real; it is necessary, the real estate should be sold to make it good. 2 Ver. 424.

So if a term commences after the death of the husband, to raise portions, if no son, for daughters, provided, that the daughters receive their father; no portion shall be raised if the daughter dies in the life-time of her father, tho' 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 administrator. 1 Ver. 276.

If a term is upon trust, that if the father dies without a son, to raise portions for daughters out of the rents and profits, as soon as conveniently may be; they may raise it by sale. Per Parker, P. H. 457, 420.

Otherwise, if it was out of the annual rents and profits, or by leases for life, or years. Per Meganfield, and another. Per Gay, P. H. 161, 474.

But if a younger child dies in the life-time of the father, before marriage, the portion shall not be rai'd. 1 Ver. 335.

If the land is no sufficient to raise portions for all, there shall be an abatement in proportion. 1 Ver. 335.

A man secured by settlement, or articles for a term, shall not be rai'd or a debt out of the personal estate. 2 P. H. 437. For more learning on this subject, for 16 Viz. Act. tit. 3. Portions.
Possession, (Poffiffion) is two-fold, actual and in law:

Actual poffiffion is, when a man actually enters into lands and tenements to him defen{ed. Poffiffion in law is, when the laws declare that the lands or tenements are the property of the living. And possession is that allowance or proportion which a vicar commonly has out of a rector, or imperfection, be it certain or uncertain. Stat. 27 Hen. 8. c. 28.

Possessor, The twelve burghers of Pofhofch are so called. So also are the inhabitants of the five ports, according to Camden. The Parliament, Portmouth, Porte, portmote court, held not only in a port or town, as the word portmote is ignorantly rendered, but in any city, town, or community. Cowell, edid. 1727.

Posthole, (Mentioned in Stat. 35 H. 8. c. 7.) is the hole of fish, as soon as it is brought into the haven.

Portsmouth, For supplying the town with water, 44 Stat. c. 42.


Portus, (Mentioned in flat, 9 Reg. 5. Educ. &c. cap. 10.) is reckoned among books prohibited by that statute, it is the book we now call a brevity. Cowell, edit. 1727.

Portugal, Goods of Portugal, the Azores, Madeira and Canary islands, may be brought in ships, having three months of the mariners English, 12 Car. 2. c. 18. f. 14.

Shipwrecked mariners, and differted perfons, (being objects of England) how relieved in Portugal, 8 Geo. 1. c. 17.

PoTle, Is an incontinuouin mind, but used substantively, or signifies a po{f{ly, as we say, such a thing is in press, that is, such a thing may possibly be; but of a thing in being, we say it is in effect.

PoTle remittius, See Power of the county.

Poffelfio fratris, Signifies in the law, where a man hath a son and a daughter by one woman or venter, and the son is the eldest, then the daughter is held out in his entry and dies without issue, the daughter shall have the land as peer to his brother, although the second son by the second venter is heir to his father: But if the eldest son dies without issue, not having made an actual entry and sellin, the younger brother by the second wife as heir to the father, shall enjoy the estate; and not the iitter.

In 1f. 11. 15. Lands are settled on a man, and the heirs of his body, and he hath iifie a son and a daughter by one woman, and a son by another, and dieth; and then the eldest dies before any entry made on the lands either by his own act, or by the po{f{fion of another, the younger son is the heir, claiming 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 po{f{fion; or if the lands were leaved for years, or in the hand of a guardian, there the po{f{fion of the lecher or guardian doth veft the fee in the elder son, although the eldest the father, and dying without issue, it was adjudged, that the younger brother, and not the iitter, should have it. Cro. Car. 437. See Deffent, Hitt.

19 Geo. II. no. 115.
to have the land during the years, which cannot be denied to another. 1 Co. 154. 6.

So, if a term be devised or granted to one for life, and afterwards to another with the residue of the term; this residue of the term cannot be assigned, being but a possibility. 4 Co. 66. 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 shall not till he be married, and therefore cannot be a possibility. 10 Co. 516. Poth. 5.

So, if an advowson be granted to a bishop, and his successors, ps. mortem of the incumbent; the bishop cannot demise to another ps. mortem of the incumbent; for he has nothing till the incumbent dies, who may survive him. Dy. 24. 4.

If upon a purchase of the manor of B, the manor of C, be, for the purchaser's security, limited to the vendor and his heirs till eviction, and after eviction to the purchaser, 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, assigns, is a word of limitation, and not of purchase. 2 Kell. 795. 4. 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 the land to his assigns, and afterwards for life A. Poth. 5.

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. 2 Tsa. 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. Epp. Co. 30.

So, if a person grant to A, to be matter of an hospital; he cannot grant it to another ps. mortem of A, for he has nothing in him; for A has an effect of inheritance during his life. Ca. Co. 214, 215.


So if a man make a lease for 21 years in perpetuity, or in futuro, he cannot afterwards grant a lease to another by parole for the same time. Pl. Cam. 430. See 16 Fin. Adr. tit. P. possibility.

Poth. See Poth-office.

Poth quaintly, Were words first inferred in the bill of Edward the Fifth, but not constantly used till Edward the Third's time. Chief. 1. Edw. 3. in derog. m. 33.

Poth diem, 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 Cypias Brebion hath four years, whereas he hath nothing if it be returned at the day: It is sometimes taken for the fee itself. Cowell, edit. 1727.

Poth difficult, Ps. difficulta. Is a writ given by the fist, of Wyfja. 2. 26. and lies for him that having recovered lands or tenements by practice good, redatum, upon default or redemption, is again defeated by the former difficulty. F.N. & B. for. See the writ that lies for this in the Register, fol. 268.

Police, Is the return of the proceedings by nisi prius into the court of Common Pleas after a verdict, and there afterwards recorded. See Plowman, fol. 241. Saunder's case. See also an example of it in Coke's Reports, vol. 6, fol. 46.

Police is a record of this court truited with the attorney in the cause by the clerk of the sifte, and the attorney is bound, if he be so truited, 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 will bring the matter to do. 2 L. P. R. 338. tit. Police.

It is not necessary to annex the records under the police, 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. Police.

There is no general rule of court for the clerk of affite to bring in the police 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 griev'd may move the court or at the side bar, and thereupon the court is at liberty to give a rule that he bring them in speedily. N. S. 32. 2. 51. to avoid further delay to the party concerned. 2 L. P. R. 337. tit. Police.

Formerly a grant by the stiles for want of confinement of leafe, entry and offices, the plaintiff's attorney immediately made out a writ of pothiccion : But the practice has been relaxed; so that now it cannot be done until after the police comes in, in the day in cause, for it may be there that was not due notice of trial given, or there may be some other good reason sufficient to set aside the nonuit. 2 L. P. R. 385. tit. Police.

Note, That he who moves in arrest of judgment upon a declaration must always have the roll in court. But in this court, it is not so: for it is given to the party that is to move in arrest of judgment, be the police in nonuit or no, and thereupon the court if there be cause will give day over. But in B. R. the practice is to have four days to move in arrest of judgment after the police comes in, till it be more than a year after the verdict. But in this court, it is a matter of practice, that they may sign judgment, though it be as soon as the police comes in. Sid. 36, pl. 6, Poth. 13 Car. 2, in C. B. Annu.

The defendant has four days by the rules of the court to speak in arrest of judgment after the police is brought in, and the party for whom the verdict was paffed, will not bring it in, upon notice to him by the party that he intends to move: in arrest of judgment, the court upon motion setting forth this matter, will order judgment to be filed until 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 judgment. 1 L. P. R. 337. tit. Police. See 16 Fin. Adr. tit. Police.

Pothiority, (Pothiorietias.) The coming after or being behind, is a word of comparison, and relation in nature, the correlative whereof is priority; for a man holding lands or tenements of two lords, holdeth of his an elder lord by priority, and of his latter lord by pothiority. Stand. Præcis, fol. 10, 11. When two tenants hold of two lords, of the one by priority, of the other by pothiority &c. Old Natt, Brev. fol. 94. Co. 2 Inf. fol. 392.

Poth fine, Is a duty belonging to the King, for a fin, formerly acknowledged before him in his court, which passed the cognizance, after the fine is fully paid, and all things performed touching the fine; it is dead thereon so much, and half so much as was paid to the King for the fine, and is collected by the sheriff of the county where the land, &c. lies, whereof the fine was levied; to be answered by him into the exchequer. 22 & 23 Car. 2. 31, 94, 95. for better recovery of fines and forfeitures, Payment of poth-fines regulated 32 Gez. 2. c. 14. 15. S. Sheriff.

Poth-hytes. See Poth-office.

Pothiousum children, Children born after the decease of their father. By Stat. 10 & 11 Wil. 3. cap. 16 it is enacted that there any estate be by any marriage or other settlement limited to a child born after the decease of its father, or of other sons of the body of any person, with remainder over to, or to the use of, any other person, or in remainder to, or to the use of, daughters, with remainder to any other persons: Any son or daughter of such person, born after the decease of the father, may take such estate in the time manner as if born in the life-time of the father; although no estate be limited to trustees to preserve the contingent remainder.

Pothiata and Pothiata, Marginal notes, or to mark annotations on a roll. Trisit in his <br>Chronicle, in the work of Stephen Langton, archbishop of Canterbury, tells us that Super bilum illam revit. Quemque par capitula quidem<br>usu uterque moderni dibitatis, et thum &b. c. diutini <br>Brevium Archi, Super pottiiam pothiata ferifit &c. &c. &<br>Anna, another of the historians, writing of one Ephes.,<br>Dominican and cannot, tells us, that Eneas bilum pothiati<br>latus. Cowell, edit. 1727.
Pothuari. In the seventh year of King James, after any arguments and long debates, it was by all the judges resolved, That such as were born in Scotland after he deserted the crown of England to King James, to consider him as English: But the Antients, that is to say, such as were born before that descent, were aliens in regard of the time of their birth. Gr. 7. Rep. Calv All's cafe.

Pothuarius, is a word often mentioned in Bradford, Fleta, and other law writers, and signifies the second son. So in Brompton, lib. 2. cap. 35. Eft enim in genere qulidam paritius quid potius praefertim

Pothessor. A general post-office erected, 12 Car. 2. 35. § dem. c. 10. Made perpetual and part of the general fund, 3 Geo. 1. c. 7.

Packet-boats not to carry merchandise, without leave from the commissioners of the customs, 13 & 14 Car. 2. c. 32.

The King'sicate-tail and reception in fee in the post-office revenue confiscated, 1 Anne. 2. c. 12.

Carriers prohibited to carry letters, 9 Ann. c. 10. § 3.

How horses are to be provided, 9 Ann. c. 10. § 5, 25, 27, 28.

Penalty of sending ships letters to general post-office, 4 Ann. c. 10. § 15.

Penalty of carrying the mail in any ship which is not seamen, 9 Ann. c. 10. § 24.

Small debts for postage recoverable as small tithes, 6 Ann. c. 10. § 30.

Saving of the privileges of the universities, 4 Ann. c. 10. § 32.

Officers not to influence elections, 9 Ann. c. 10. § 44.

Bills of exchange, &c. to pay contingent postage, 4 Geo. 1. c. 23. § 51.

Penny should not be paid for the delivery of penny post letters in the country, 4 Geo. 2. c. 33.

Penny-chaises may be furnished by any person, 22 Geo. 2. c. 25.

Writs to pay postage as letters, 26 Geo. 2. c. 13. § 7.

Pattern inscribed to pay at a double letter, 26 Geo. 2. c. 13. § 8.

Exemptions against the acts concerning the post-office, to be excepted out of the general pardon, 20 Geo. 2. c. 52. § 28.

By statute 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 carried to the aggregate fund, no letters or packets shall be exempted from postage, but shall be taxed as for or to the King; and such, not exceeding two ounces in weight, as shall be sent during the session of parliament, or within forty days before or after summons or prorogation, and be signed on the outside by a member of either house, and the whole if the superfrication to be of full member's writing; to carry with him a member at his usual residence, or place 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 summons or prorogation, signed and directed as aforesaid: 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 Secretaries; Secretary at War, or his deputy; Lieutenant General, or other Chief Governor or Governors of Ireland; or their Chief Secretary, or Secretary for the province of Ulster and Munster; their secretaries residing in Great Britain, the undersecretary 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; their secretaries, or deputy for Scotland, Ireland, and America; the secretary or deputy of the Postmaster General; farmer of the bye and cross 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 superfrication 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, into for the King's service, and taxed with the Seal of Office, or of the Principal Officer in the departments.

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 persons in their respective offices, of whom lists to be transmitted to the General Post-Office, London, to indorse the letters and packets upon their being sent, and seal the same, with the Seal of Office 25. None to be so indorsed and sealed, but by direction of their superior officer, or which concerns the business of the office, on forfeit of 5l. for the first offence, to be recovered and applied, as by act of 9 Anne is directed 25 and for the second offence, the offender to be discharged.

Sect. 3. Persons appointed to make such indorsements, 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 superfrication, shall authorize some person to sign his name upon and write the superfrication, and give notice thereof under his hand and seal to the Postmaster General, letters and packets, so signed and subscribed, shall go free.

Sect. 5. Printed votes and proceedings in parliament, and news-papers, cannot be 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 him by the Postmaster General or his deputy at Edinburgh or Dublin, 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 upon the return therefrom, and if the said packet or any thing included therein, shall be construed as being the whole packet, or the packet which was before, other than the superfrication 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 1764, counterfeit the writing of any person in the superfrication of any letter or packet, to avoid the postage, he shall be adjudged guilty of felony, and to be transported for seven years.

Postmasters. (Post-men) Set or put after another. 2 & 3 Car. 2. Subsidy act.

Post-office contracts, Inclosures.

Post-term, (Post-terminums,) Is a return of a writ, not only after the day assigned for the return thereof, but after the term also, for which the Opulus Brevis takes the fee of twenty-pence;—Sometimes also it is taken for the fee itself. Cowell, edit. 1727.

Postulate. A petition made upon the unanimous voting any number of 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 canons of the fee. By the old customs an election could be made by a majority of votes; but a postulation must have been nemo contradicte. Cowell, edit. 1727.

Pot. A head-peace for war, mentioned in flat. 13 Car. 2. cap. 6.

Portables, are what ships to be imported, 22 Car. 2. c. 18. sect. 8. Not to be imported from the Netherland of Germany, 13 & 14 Car. 2. c. 11. § 23. See Plantations.

Pound. (Puces.) Signifies a place of strength to keep cattle in that are disbarred, and put there for any trespass done, until they are reprieved 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 Kitchen.
Poueuynce, (Pouuer, derived from the French pour
voir, 1. provoirc) Signifies an officer of the King
or Queen, or other great personage, that provides
and other viual for their house. See Mag. Chats.,
172, and 3 Edu. 1, cap. 7, & 31. & anno 28 ejfplum
Articuli fuper chartas 2. and other flatutes. The
name of pouuer was so odioue in times past, that by faltad
36 Edu. 2. 2. the heinious name of pouuer was chan-
ged into boyer; but the office is restraited by flat. 12 Car
2. 2. 14.

Pouwer, To what duties liable, 3 Ges. 1. cap. 4.

Penalty on perons mixing it with fhrch or alabafier,
Etc., or exooping fuch mixture to fale, 10 Anf. cap. 26.
f. 21. 12 Ann. f. c. 9. f. 2. 4 Ges. 2. c. 14. f. 5.
And on powder makers, &c., having alabafier, &c., in
their cufody, 4 Ges. 2. c. 14. f. 8.

Makers how to enter their places of abode and work-
houses, 4 Ges. 2. c. 14. f. 6.

The power of officers to fearch fuch workhouses, 4
Ges. 2. c. 14. f. 7.

Penaltics on thofe that obftruct them, 4 Ges. 2. c. 14.
f. 9. 10.

Powuer, Is an authority which one man gives to an-
other to act for him; and it is fonetimes a refevation
which a peron makes in a conveyance for himfelf to do
fome acts, as to make leaves, or the like. 2 Lit. Abr.
339.

1. Upon what eflates, and by what words fhall a power
be raifed.

2. How a power fhall be expofed.

1. Upon what eflate, and by what words fhall a power
be raifed.

In conveyances to an ufe, a man may direét or model
the ufe, as he pleafes, and the flat. 27 H. 8. c. 10.

cuer, edit. 1727.

Pouuer against a neighbour is of the fame nature:
"Is mentioned in the Manif. 1 teas. pag. 843. and in
Thorn, pag. 2033. Et de purpurtra quam Bercarius
albus purpurisidenter praeceflmus Iluham.
POW

POY
cuts the possession to the infe: And therefore he may annex powers to ejects, which cannot be annexed to them by a conveyance at the common law. Ca. L. 237. a. Mo. 610. And to reduce to the limitation of an life, he may annex a power to make leaves for 21, 99 or more years, or for one, two or more lives, or to make leaves for life, by him and his grantee, and his assigns, to cut down trees. 2 Ed. 317. But a man cannot annex a power of revocation to a feuificion, or grant; for that will be void. Ca. L. 237. a. Mo. 610. So a man feised in fee, covenant to fead feised to the use of his selfe or his life, with power to make leaves, remains to another in fee, the power is not well. Ca. Ch. 161. If the consideration of the covenant does not extend to the power to make leaves. Mo. 105. Ca. 175. Ray. 248. So upon such covenant he cannot receive a power to make leaves, jointure, or for prentis of younger children. Ca. Mo. 381. 383.

Words which shew the intent of the party are sufficient to create a power; as, if a power be to demise or leaf, then the intent is, that he declare the ufit of the first settlement for life or years: For the leaf does not take effect by demise, but by declaration of the uses. Ed. 611. So, if a man exprest the power only by implication, it is to well: As provided, that it shall not have power to alien, &c. other than wise to make a jointure, and leaves for 21 years; it is a good power to make a jointure and leaves. 1 Ed. 148. So, if a devise be to A. for life, to let, and make eafites out of it as I might, and afterwards to his daughter in tail; A. has a power to make leaves, it being the feions of the country where the land lies, to let for lives or years. 2 Rol. 261. l. 55.

But a power, being executory, may be restrained or enlarged by a subsequent deed: As, if a power be general, to revoke; by a covenant afterwards, that he will not revoke without the consent of B. the power is restrained. So, if the consideration upon which the power was founded, does not extend to the person to whom the leaf is made, the leaf shall be void: As, if a man covenant, in consideration of natural affiition, to flande seised to the use of himself for life, &c. with power to make leaves, &c. a leaf to a friender is void: For he is not wise in the consideration. 2 Rol. 260. l. 30. So, if a power, at its creation, be to make leaves to a person, to whom the consideration does not extend, it will be void, though the leaf be executed, so a perfon within the consideration. 2 Rol. 260. l. 35.

2. How a power shall be expanded. A power shall be expanded friently; and therefore if a man has a power to make leaves generally, this extends Vol. II. p. 115.

to make leaves in possession only, and not in reversion. 3 Rol. 361. c. 5. 2 Cro. 318. 4 Rol. 212. Ray. 248. M. 9 W. 3. in B. R. inter Winter and Lovelady, (1 Lt. Raym. 267. 2 Sel. 337.) 1 Lev. 168. 7 Cro. 32. a. Mo. 109. 1 Lev. 35. 3 Lev. 131. Nor a lease to commence in future. Ray. 248. 1 Lev. 35. 4 Rol. 227. 3 Sel. 318. Mo. 494. So, if the power be to make leaves in possession, he cannot make a lease of land in reversion, though it be to commence in prentis. 1 Sel. 101. Ca. Ch. 13.

So, if power of a lease be in reversion, the whole leaf shall be void, 3 Sel. 276. So, if the power be to make leaves in possession, or in reversion, he cannot make a lease in possession, and another leaf of the same land in reversion; but his power to make leaves in reversion extends only to make leaves of the land, which was not in the same conveyance. Per Holt, Mo. 9 W. 3. inter Winter and Lovelady. (1 Lev. Ray. 265. 2 Sel. 337.) So a power to make leaves in reversion does not warrant a lease to commence at the end of an estate then in effe. Per Holt, Mo. 9 W. 3. 2 Lev. 269. 2 Sel. 537.) So a power to make leaves of three lives or three years in possession, or for two lives or thirty years in reversion, warrants only a concurrent use, the lessee of three leaves for lives cannot commence at a future day. Per Holt, Mo. 9 W. 3. inter Winter and Lovelady. (1 Lev. Ray. 265. 2 Sel. 537.) But if a power be annexed to the estate of him in reversion, to make leaves generally, he may make a lease in prentis of the reversion. 1 Lev. 168. Though the power be to make leaves in possession. Ca. Ch. 18. Acc. for Keling, but 2 J. cont. 1 Lev. 168. and it was admitted cont. 1 Sel. 260. 261. So, if a fine be to the constee for 15 years, afterwards to B. for life, &c. with power to lease for three lives, or 21 years in reversion; he may make a lease during the 21 years of land in Jointure at the time of the fine, when lease expires. Per Coke, 2 Rol. 260. 520. Ca. Mo. 347. 2 Rol. 216. 1 Rol. 12. So if husband and wife lease pursuant to the statute of 32 H. 8. And then, by act of parliament, the estate is settled to the husband for life, with power to lease for three lives or 21 years; he may make leaves during the 21 years of land in Jointure; by the statute of 21 Rol. 261. 263. See also 2 Rol. 261. 1. 35. So he may make a lease for years determinable upon three lives, to commence after the end of the former lease in effe. 8 Co. 70. See 16 Vin. Abt. tit. Power.

Power of the repute, (Poffe comitatus.) In the opinion of Landhard, in his Eironbers, lib. 3. cap. 1. 1. 359. containeth the right and attendance of all knights, gentlemen, yeomen, labourers, tenant-ferfs, apprentices and all others, above the age of fifteen years within the county, because all of that age are bound to have barracks by the statute of Winchester: But women, ecclesiastical persons, and such as are decucked, or labour under any infirmity, shall not be compelled to attend. And the statute of 2 Hen. 5. cap. 8. 82. that persons able to travel, shall be applicant in this service, which is used where a poftc is kept upon a forciue entry, or any force, or rescue used, contrary to the command of the King's writ, or in opposition to the execution of justice. Clar. 4. 2727.

The privilege, need be, may raise the power of the county to visit him in the execution of a precept of requisition, and therefore, if he make a return therein, that he could not make requisition by reason of resistnace, he shall be immured. 1 Hawk. P. C. 152. See Accr, and 1 Hawk. P. C. 160—161. See Poison. 4 T. 261.

Practice.
Practise. The law loves plain and fair practise, and will not countenance fraud in proceeding, nor suffer ad-

vantage to be taken thereby. 1 Ed. 4, 347.

Poyninges Law, as it is an act of Engl. made in Ire-

land, anno 1577, and it is said, because Sir Edward Poy-

ninges was lieutenant there when it was made, whereby

all the statutes in England were made of force in Ireland,

before that time were not, neither are any now in

force there which were made in England since that
time, unless it be the 3 Hen. 8, fol. 22, & 3 Hen.

Praecipitans (Praecipitans, mentioned in stat. 32
Hen. 8, cap. 24.) Were a kind of benefices, and so ter-

med, because they were possessed by the more eminent
Templars, whom the chief mafter by his authority created
and called Praecipitans templi. Stephens de Juris. lib. 4,
cap. 10, n. 27. There are other such hurls besides the

four commonly called to their principal man-

tion, the Temple in London. Of these praecipitans, we

find 16 recorded, as annually belonging to the Temples

in England, viz. Cuffing, Temple, Botolph, Shangley, New-

land, Laven, Witham, Temple-bower, Hollesley, Rathby,

Ovington, Temple-cote, Trelgb, Kibworth, About-

fined and Temple-yale. Act. A 6. 7. 24. is the first statute

but there were more. Cowell, edit. 1727.

Pratiue in captiv. (mentioned in Magna Charta,
cap. 24.) Was a writ illuing out of the court of Chancery,

for a tenant holding of the King in chief, as of his crown,

and not of the King, as of any honour, castle or manor.

And it was a right that

Practise quod reatur. Is a writ of great diversity

both in its form and use, for which see Jeoffry and

Cnut. This form is extended as well to a writ of

right, as to other writs of entry or partition. Old Nat.

Brev. fol. 13. And it is sometimes called a writ of right

efts, when it illues out of the court of Chancery, at

sometimes a writ of right patent, as when it illues out of

the Chancery patent and open, to any lord's court, for an-

y of his tenants detorced, against the deforcer, and must be
determined there. Of which read more at large in Dis.


Praetorlatitria. A battering ram: 'Tis mentioned in

Maitland, Parli. p. 276.

Praecipientia. Was a punishment by casting a man

from some high place or rock. Malm. lib. 5, cap. 155.

Praedicator, Praedicitae (Lat.) in English aforesaid, is a

word used in pleading, applied to places, towns, lands,

names, parties, Et. befromentioned. Low Lat. Diet. In

the two last words praedictae, praedicitae, are a met-

phorical description of the matter before named: And a town

repeated by the name of parties praedicitae, shall be held all

one; for the word aforesaid couples them. Hib. 6. A

difference as to praedictae term granted, Et. See 10 Edin.

Praefectus in a praefectus vice. The mad of a town

in Lat. Edinburgh, cap. 28.

Praetane (mentioned in fltt. 22 & 23 Car. 1, for

laying impositions on proceedings at low) 1. that fine

which is paid upon issuing out the writ of covenant. See

Praefuit. Praemunire. Is taken either for a writ so called, or

for the offence whereupon the writ is granted; the

same may be understood by the other. Hereinabre the church

of Rome, under pretence of her supremacy, and the
dignity of St. Peter's chair, took upon her to bellowe null

of the bishopricks, abbeys and other ecclesiastical livings

of any worth here in England, by mandates, before they

were void; she pretended, that the great care to see the

churches preserved of a certaine before it needed. Wherein a

time, that these mandates or bulls were called gratia ex-

pectativa or praemunire, whereas a learned discerners in

Dunsen's de benefict. lib. 3, cap. 1. These provisions

were so common with us, that at last King Edward the

Third not digesting it intolerable an inconvenience, made a

cap. 22. and another flat. 6. cap. 1. and a third ann. 27.
against that which drew the King's people out of the realm,
to answer things belonging to the King's court; and

another ann. 28. flat. 2. cap. 1, 2, 3 & 4. whereby he

greatly restrained this liberty of the pope; who notwithstanding

had adventured to continue the praemunire; and

much that King Richard the Second likewise made fe-

eral statutes against them, but most expressly that of

16 Ric. 2. 57, which appoints their punishment to be 100

pun. for every time of praemunire committed with, by their

elaters, and their lands, tenements, goods and chattel-

its. After him King Henry the Fourth, in like man-

ner aggrieved at these abuses, not only met with in the
former statutes, in the second year of his reign, c. 3 & 4.
adds certain new cates, and lays upon the offenders in

the same punishment as the former, viz. 1. 2 Hen. 4. c. 8.
and 3 Hen. 5. cap. 4. and Smiths Repl. Leg. lib. 3. cap.
4. Some later statutes inflict this punishment upon other

offenders, as namely that of 1 Eliz. cap. 1. upon him

that denotes the King's supremacy the second time; and 1 Eliz.
cap. 2. upon him that affirms the authority of the pope.

For which it is said, that for an offence committed,
shall incur a praemunire, is meant that

shall incur the same punishment as is inflicted on those that

transgress the statute. 16 Ric. 2. cap. 5. commonly called
the statute of praemunire; which kind of reference or ap-

plication is not unusual in our statutes. As to the et-

ymology of the word, it proceed from the verb praemunire,

being barbarously turned into praemunire, to forswear a

man or a thing, and the offender take heed. Of which a reason

may be gathered from the words of the statute, 27 Edu.

v. 1, and the form of the writ, in Old Nat. Brev. fol. 143.

Praemunire was praes judices praemunire, & f. praemun-

eri, &c. quod timeit fret carnem obSt, &c. which words

can be referred to none but parties charged with the

offence. Cowell, edit. 1727. See 3 J. 110. 110.

1. What offences come under the notion of a praemunire.

2. Of the punishment of a praemunire.

3. What offences come under the notion of a praemunire.

The offences coming under the notion of a praemunire, or for which the party incurs a praemunire, are reduced by

Serjeant Hawkins to the following particulars. 1 Hawk.
P. C. 48, &c. So called from the word in the writ, which is used for praemunire. Co. Etad. cap. 129. 3 J. 110. 110.
1. The offences of making use of papal bull, against the

praemunire, by many ancient as well as later statutes, to

which purpose it is enacted by 25 Ed. 3, called the statute

of provisors, that whoever shall by a papal provision dis-

urb any patron to present to a benefite, Et. shall be fined and

imprisoned 'till he make full reparation. And it is further enacted by Edw. 5, cap. 27. that if any one purchase a

provision of an abbey or priory, he shall be out of the King's protection; and by 38 Ed. 3. and 12 Ric. 2. cap.

15, and 13 Ric. 2. flat. 2. cap. 2. That whoever shall accept a benefice contrary to 25 Ed. 3, shall be

banned; and by 13 Rich. 2. flat. 2. cap. 7. That who-

over shall bring a sentence of execution against any

person for executing the said statute of 25 Ed. 3, shall

incur pain of life and member; and by 16 Rich. 2. 5.

That whoever shall purchase or praemunire, or cause to be

purchased or purloined, in the court of Rome or elsewhere,

any transolution, procellac, benefacies of excommunication

bulls, or any other things contrary to the terms of the

said statute, which toucheth the removal of a prelate from

his crown, his regality or his realm, or bring them within

the realm, or receive, Et. shall be out of the King's protec-

tion; and their lands and tenements, goods and chattels

forfeited to the King, and they shall be attached by their

bodies; and by 2 Hen. 4. c. 3. That whoever shall pur-

chase from Rome a provision of exemption from ordinary

obedience;
Secondly, The derogating from the King's Common
laws, is faithful to the most high offence at Com-
mon Law, and made a praemunire by many ancient fla-
tutes; for by 27 Ed. 3, cap. 1, of provisors, If any fa-
a drawn out any of the realm in plea, whereof the cog-
science pertains to the King's court, or of things where-
upon judgments are given in the King's courts, Or in
any other court to defeat or impose the judgments given
in the King's courts, he shall be warned, or, in ope
pro Ferm, at a day containing the space of two
months, at which he appear not, he and his proctors,
shall be put out of the King's protection, his lands
and chattels forfeited, his body imprisoned, and ran-
mon at the King's will, &c. 3 Hen. 8, cap. 5, both those who shall pur-
se, or cause to be pursued in the court of Rome, or elie-
here, any procelves, or infringement or other things what-
ever which touch the King, against him, his crown and
goldy or his realm, and also those who shall bring,
re- ceive, or execute them, and their chattels, &c. shall be
put out of the King's protection.
In the construction of these statutes it hath been helden,
at certain commissioners of fewers, for determining some
who had got a judgment at law, and im-
prising him till he would release it, were guilty of a pra-
Those persons, who, in the King's courts within the
realm, for matters which upon the face of the
which appear to belong only to the cognizance of the
empirical 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 helden, that even suits in a
court of equity, to release either upon them, or 13 Ed.
by the said statute of 13 Eliz. the suitors, comforters,
and maintainers of such offenders, after the offence, to
intend to uphold the said usurped power, incur a pra-
emunire. Davi 94.

Seventhly, Be 13 Eliz. cap. 7, "If any one shall bring
into the realm, &c. any agent deo, crofis, pictures, beads,
or such like superstitious things, pretended to be hallow-
ed by the bishop of Rome, &c. and shall deliver or offer the
fame to any subject to be used in any wife; or if any
one shall receive the fame to such intent, and not de-
cover the offence, &c. or if a judge of peace, having
any offence in that act declared to him, do not within
fourteen days declare it to a privy counceller, he incur a
praemunire.

Eighthly, By 27 Edw. c. 2, "Sending relief to any je-
POSIT. Itnaries, or college of prfects or fufitues
beyond the sea, or to any person in the King's
shall incur the like penalty. Vid. Reg. 5-
4. lit. 127.
By the 13 Eliz. cap. 2. Those who purchase any bulls,
either from Rome, are guilty of high treason; but those an-
ent statutes continue still in force, and it is in the
election of the persons in the suit, whether they be in the
eight hours after the election the King's, shall incur the like penalty. Vila. Reg. 5.

2. Of the punishment in a praemunire.

Most of the statutes of praemunire refer the punish-
ment to 16 Rich. 2. c. 5. which enacts, "That those
who offend against the purport thereof, shall be put out of the King's protection, and by the aid of their land and tenements,
goods and chattels forfeited to our Lord the King, and that they shall be attached by their bodies if they may be found, and brought before the King and his council, there to answer to the caules aforesaid; or that procefs be made against them by praemunire facies, in manner as is
ordained in other statutes of provisors."

The judgment in praemunire at the suit of the King,
against the defendant being in prison, is, that he shall be
put out of the King's protection; and that his lands and
tenements, goods and chattels shall be forfeited to the
King; and that his body shall remain in prison at the
King's pleasure, and if the defendant be convicted upon
his default of not appearing, whether at the suit of the
King or party, the same judgment shall be given as to
the being out of the King's protection and the forfei-
ture; but instead of the claue, that the body shall re-
main in prison, there shall be an award of a captivus.
Co. Lit. 129. b. 3 Indl. 125, 218. 2 Hawk. P. C. 444.
As the above mentioned statute 16 Rich. 2. c. 5, ex-
pressly faith, that such offenders shall be put out of the
King's protection; and also the statute of 25 Edw. 3. fl.
5. cap. 22. had farther added, that any one might do
with a purchaser of the provisors therein prohibited, as
with the King's enemy; and that he who shall offend
against such an one, an accomplice, or any other shall be
executed; it was formerly helden, that a person attaint-
ed in a praemunire might lawfully be slain by any one,
as being the King's enemy, and out of the protection
of the laws; but the later opinions seem to have disappro-
ved of this severity; and it is now expressly enacted by 5
Eliz. cap. 1, fl. 21, 22. That it shall not be law-
ful to kill any person attainted in a praemunire, saving
such pains of death or other hurt or punishment, as
heretofore might with danger of law be done upon any
person that shall offend or bring into the realm, or
within the same shall execute any procès, &c. from the feme of Rome, Co. Lit. 135. 12. 68. 3 Ind. 128. Bro. Cor.
197. Jenk. 199.
It is clearly agreed, that a person attainted in a pra-
emunire can bring no action whatsoever; neither is it safe
for any one, knowing him to be guilty, to give him any
aid, comfort or relief. Co. Lit. 137.
Parens, (Parens) Is the portion which every,
or, in short, a claim of the church in a
benediction in the church; and parens is
generally used for that bare which every
benediction received yearly out of the common
flock of the church; and parens is a beneficial,
rising from some temporal land, or church
propriated, towards the
maintenane of a clerk, or member of a collegiate
church. An ancient form of the
benefit of the
profit growth. And thes, parens, are either family
or with, divorce. Simple, **parens** are those that have
more but the revenue towards their maintenance:
Parens with dignity are such as have jurisdiction annexed
to them according to the divers orders in every
several Parish. Parens, in the act of
**Parens** are a right of receiving the profit for the
plains, bishop, or a judge in the church,
**the school**, &c., for the support of the
profit in that divine office where he resides; and
and **parens** in a canonical as a daughter from her mother.
Paras is parens that is received by a prebendary,
every there, which are particularities for his daily
maintenance. Parens and prebenda were also in old
days used for pews, or provand or provener.

Precedent, (Precedent) Is he that hath such
prebend, to called, or a prebendary assistant & confusion
epiços, but from receiving the prebend. The Golden
prebendary of Harford, otherwise called prebendaries episco-
epip, is one of the twenty-eight minor prebendaries there
who has ex officio the first canon's place that sits, was
anciently conventional of the cathedral church, and to the
bishops, and had the altaries, whereas, in respect of
the gold, and other rich offerings formerly made there
he had the name of Golden prebendary.

Peculiar, Are days-works, which the tenants of
some manors are bound, by reason of their tenure, to do
for their lord in harvest; and in divers places are voluntary
and voluntary-days, called *voluntary-days*, which to the
Saxon *Dietas predictas* is, for the sake or in prayer, or intercession
addition in the great book of the
Cantons of the Monastery of Battle, tit. *Appreliaria*., ad
60. Cowley, edit. 1717.

Precedence, Statute for regulating precedence of lords
and other great officers in parliament, 31 Hen. 8. c. 10.

Precedents, Are examples or authorities to follow,
in judgments and determinations in the courts of justice.
For if we shall adjudicature contrary to received
precedents, it will be of evil example to the young apprentices
and students of the law, inasmuch that they will not
know what to give credence to; whether old books
or new judgments. 1 Stow. 124, Arg. cites 33 H. 6. 41.

Per Prifta.

Two or three precedents will not make a law, and
effects especially where there are 40 to the contrary. Dr. Return
of Briefs, p. 93, cites 5 Ed. 4. 10.

In some cases the fact is the return. The names of 12
only upon the back of the writ, and not in a schedule
as is usual, and he returned *veri sic* and *not execut.
alis bravus*. And all the justices of both benches agreed,
that they would not change the ancient course, for
the mischief which might happen; for it 12 only should be
returned, none can have a jury without a writ, it may be
challenged; by which they caused the fact to amend
the return in pain of annulling; and yet the writ is
*veres factae 12 libraris et leges bominis Ec.* Dr. Ret-
turn of Briefs, p. 84. cites 2 H. 7. 8.

A counsel ought not to be heard to speak against
common precedents. 1 Stow. 124, cit. 13 H. 7. 23.
A will, whereby the heir was disinherited, and the latter given to two infants, strangers, though obtained by great fraud and circumvention of the father of one of the infants, was denied by the Privy Council, because it was not signed by the testator himself.

In the case of Fry v. Porter,Mod.307.P3.2 in Can. Tong. Ch. J. said, he wondered if the will had been written in the presence of the testator, and if the testator had signed it, as those who signed it were not present.

In the case of R. v. G., another, it was shown that the will was written in the presence of the testator, and the testator had signed it, as those who signed it were not present.

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gift is void, because the habendum can only limit the duration of the estate, but no man can by virtue thereof hold it for ever if the same is not given to another. In Co. Lit. 7, a. Cro. Eliz. 903. 2 Rol. Abr. 66, 67.

And 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 premisses; and therefore shall take nothing of that which was before her husband. 2 Rol. Abr. 67.

But there are these four exceptions from this rule: 1. That if lands be given in frank-marrige, the woman that is the caufe of the gift may take by the habendum, though she be not named in the premisses; as if lands be given to J. S. habendum marginitam una cum the woman who is daughter of the donor; this is a good estate-tail in the wife; for these customary grants, which are made in pursuance of a former furrender, are construed according to the meaning of the words, as well as those before that, the custum of the manor is the rule for the expulsion of such fort of grants, and in many manors such fort of form is usual. Poph. 125, 126. Brook's cafe. Cro. Jac. 434. 2 Rol. Abr. 67. Cro. Eliz. 313. Downes and Hopkins.


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 construction of wills, the intention of the deviser is chiefly regarded; and wherever that deviser himself it shall take place, though it be not expressed in those legal forms as are required in conveyances executed in a man's life-time. Poph. 158, 414. 2 Rol. Abr. 68.

Premium (Premium,) A reward; Amongst merchants it is used for that sum of money which the enbruised gives for enuring the safe return of any ship, as in the old Charts, 19 Cen. 10.

Prenet. Is the power or right of taking a thing before it is offered; from the French prendre, i.e. acceter: It lies in render, but not in render. Co. Rep. 1. par. Sir John Peter's case.

Prenet de bonat, Signifies literally to take a husband; but it is used as an exception to disable a woman from pursuing an appeal of murder against the killer of her former husband. Stannag. Cor. lib. 3. cap. 59.

Prepenfus, (Prepenfus) Forethought; as malefic prepengus, malitia præsagitis, when a man is flain upon a fudden quarrel; yet if there were malefic prepared formerly between them, it makes it murder; or, as it is called in the execution of the law, Hen. 7, c. 5. prepengus murder. See Murder. 3 Inf. fol. 51.

Pregative, (from pre, 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 intrusted with the execution of the laws. 34 Bac. Abr. 149. See Stannag. Prefix, 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 intruded with the executive part, and from whom all justice is to be done, as the law now is; hence is he filled the head of the Commonwealth, suprême du droit, but still he is to make the law of the land the rule of his government; the execution of the law, and gives his approbation to that as well as of the subjests obedience: For as the law affarts, 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 affords the rights and liberties of the subject. 1 Sd. 135. 2 Co. Lit. 117, 75. 4 Co. Abr. 149.

Hence it will be discharged as a rule, that all prerogatives must be for the advantage and safety of the people, otherwise they ought not to be allowed by law. Nis. 672. Show. 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 statute of Parens Patria Regis, or of the nursery of the King, seems to be introductory and new, yet for the most part it is but a sum or collection of certain prerogatives that were known long before: As that the King's wardship of lands held in capita, did attract the wardship of land held of others; that the grant of a manor did not put an advowson appendant, unless the King himself had a right to ecclesiastical, and other estates of the crown. Bell. 117. 2 Inf. 269. 496. 10 Co. 64. 4 Bac. Abr. 149.

1. Of the commencement of the King's reign, and his prerogative as universal occupant.

2. Of the King's prerogative in escheats; in fies and navigable rivers; in fons and fih; in beacons and light-houses; in wrecks; in coins and mines; in derril goods, and in woods, forests and furevowel trees.

3. Of the King's prerogative over the perfons of his subjects; in taking them from going abroad, and commanding them to return home.

4. Of the King's prerogative in relation to Civil and Ecclesiastical jurisdiction; in creating officers, and in making war and peace.

5. Of the King's prerogative in relation to his debts.

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 instant moment invested with the kingly office and regal power, and commences his reign the same day his ancestor died, unless it is held as a maxim, that the King never dies 7 Co. 12. in Calvin's case. 6 Co. 27. 7 Co. 30.

And herein we must take notice, that the rules of defect are the same with those that govern privy inheritances, except only as to the rule of Perish, the King not to hold in tile defect of the crown or its possessions: Neither is half blood any impediment in such case; for the brother of the half blood shall be preferred to the father, in the enjoyment of the crown as the most capable of the two, by the advantages and prerogative of his sex. Co. Lit. 15. b.

Therefore, if the King hath a fife and a daughter by one venter, and a fone by another venter, and parts chases lands and diets, and the eldest fun enters, and do not issue, the daughter shall not inherit those lands nor any other fee-fimple lands of the crown, but the younger brother shall have them together with the crown Co. Lit. 15. b.

As the King commences his reign from the day of the death of his ancestor, it hath been held, that compasse his death before coronation, ye before proclamation of him, is compas a of the King's death within the statute of 25 Ed. 3. he being King presently, and the proclamation and coronation only honourable ceremonies in the further notification thereof. 3 Inf. 77. 9 Hal. Hy.

Ptolemy II. Ptolemy II.

Alfo it is held, That every King for the time being is the actual poftiffion of the crown, is a King within the intention of the abovementioned statute; for there is a reafony that the real thould have a King, by whom, in whole name, the laws are to be administered; as the King in poftiffion, being the only perfon who either death or can administer the laws has been the only perfon who has a right to that obedience which is due to him who administers those laws; and since by virtue there he fecures to our lives, liberties and properties, and other advantages of government, he may justly clai
It has 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 actually King, was void even after he came to the throne. Hence 1 Hawk. 36. 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 Turck, during the plenary possession of the crown in Hen. 4. Hen. 5. 6. But if the usurper once more be dispossessed the crown, as King, though an usurper had gotten the possession thereof, yet the other continues his title, and claim thereto, and afterwards seizes the whole possession thereof, and committing the death of the rightful heir, during that interval, is committing the King's death within this act; he committed a felony, guatif in possession of his kingdom; when was the case of Ed. 4. in that small interval wherein Hen. 6. re-obtained the crown, and the state of Ed. 5. notwithstanding the usurpation of his uncle.

It was resolved by the judges, in the case of Sir H. Lee. That Robert, 2. was King de facto as well as de jure, and that therefore all those who acted against and kept him out of possession, in obsei-ence to the powers then in being, were traitors. King 4. 15. 1 Rol. 315. That no perfon was in possession of my forefienge power known to our laws. 1 Hawk. 6.

By the 1 M.f. 3. cap. 1. sect. 3. "The kingling office of this realm, and all prerogative, royal power, authorities, and jurisdiction therunto annexed, being invested in either male or female, are as absolutely invested in the one as the other." By 1 W. & M. ft. 2. 2. sect. 5. "Every person that is an heir, the compensation with the fee, of the church of Rome; or that profess the popish religion; shall marry a papist, shall be incapable to inherit or enjoy the crown of this realm and Ireland; and in such case the people shall be abdosed of their allegiance, and be crown-defend to such papists, being protestants, as should have inherited the same, in the person in which it was recondenced." And by sect. 10. "Every king and Queen, who shall ascend in the imperial crown, shall on the first day ofthe meeting of the first parliament, next after his or her coming to the crown, sitting in the house in the presence of the lords and commons, do publish and avow him or herself to be King or Queen, and by bussing and placing the crown upon his or her head, according to the custom of the realm, to be King or Queen in the right of his or her predecessors, and by his or her own affairs."

The King, as King, cannot be a minor; so that grants, leases, &c. made by him, though under age, bind present, and cannot be avoided by him, either during his minority, or when he comes of age; 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 an infant incapable of governing himself and his own affairs. Dyer 292. pl. 22. Plow. 209. Cafe of the dutchy of Lancaster. C. Lit. 43. 5 Cas. 27.

Rem. 90.

The King by our law is universal occupant, and all property is presumed to have been originally in the Crown, till it has been clearly proved by a contrary writing, and therefore reference is to be made to the great men who had deferred well of him in the war, and were able to advise him in time of peace. Hence it is, That the King hath the direct dominion, and that all lands are held amenably or immediately from the crown. C. Lit. 1. Dyer 154. 1 Bendl. 257. Sedl. Mare Cloath."

Hence it is, That if the seas leave any shore by a sudden falling off of the water, then derelict lands belong to the King; but if a man's lands lying to the sea are increased by insensible degrees, they belong to the soil adjoining. Dyer 356. 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 he after he has got it, every owner shall have his interest again, if it can be known by the boundaries. 8 Co. Sir Francis Barrington's case.

It is said that there is a cumbum in Lincolnshire, That the lords of the manors shall have derelict lands; and that as such it is a reasonable cumbum; for if the sea walk away the lands of the subj ect, he can have no recompense, unless he should be enabled to what he regains from the sea. 8 Med. 107.

2. Of the King's prerogative in echeats; in fines and moveable rivers; in swans and fishes; in beacon and lighthouses; in wrecks; in coins and mines; in derril gates, and in ways, streets and pasture trees.

An echeat may be either per defultum sanguinis, or per defultum tenentes; but it is said, That in case of an attainer of felony, the echeat to the lord is per defultum tenentes; and that not descending, 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 echeat. C. Lit. 13. 92. Godl. 211.

If the King's tenant dies without heir, the lands shall echeat and revert again to the crown; but the lands holden of any other lord shall, for want of heirs of the body, be reconstituted to the lord. 2 If. 36. Rol. 104. 2 Ret. Rep. 251. 4 If. 224.

If lands be held of the King as of an honour come to him by a common echeat, as the tenants dying without heir, or committing felony, these lands are part of the honour; otherwise if forfeited for treason, then it comes to the King by reason of his perch and crown; and if he grants them over, &c. the patentee shall hold it of the King in chief. 2 If. 64.

It was found by special verdict, That the prior of Menten was feized of a house in Southwarck, held of the archbishop of Canterbury, as of his borough of Southwarck; and 30 Hm. s. s. menfurrendered it to the King H. 8. who granted the said house to the burgage of London, Middlesex and Essex to J. S. and his heirs, to hold it of him in liber burgagio, by fealty, for all services and demands, and not in capite; and afterwards Q. Mar. granted the manor and borough of Southwarck to the mayor and commonalty of London; and the tenant of the said melj- fuse died without issue, and the question was, whether Q. Eliz. or the patentees of the borough should have the echeat; and adjudged for the Queen; for the full patience of the sequestration held it of the Queen in freege in capite, as of a feigny in gross; and the words in liber burgagio are merely void, for the land out of the borough cannot be held in liber burgagio; and there shall not be several tenements for one tenure was reconverted by the King for all; and therefore of necessity it shall be a tenure in focage of the King. Cre. 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 dealt very freely with all continental affairs; and therefore the territories of the English sea and rivers are always allotted in the King. Sedl. Mar. Gt. 254. &c. 1 Ret. Abr. 168. 150. 5 Cas. 106. 1 Co. 141.

And as the King hath a prerogative in the seas, so hath he likewise a right to the fisheries and to the foil; so that if a river as far as there is a flux of the sea leaves its channel, it belongs to the King. Dyer 356. 2 Ret. Abr. 170.

Hence the Admiralty court, which is a court for all maritime causes or matters arising upon the high seas, is deemed
deed the King's court; and its jurisdiction derived
from him who protects his subjects from pirates, and pro-
vides for the security of trade and navigation. 4 pl. 142.
Moly 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
blatate for commissions of
fow, provide against inroads by lands, banks, 
and that he had a prerogative herein as well as in defending
his subjects from pirates, &c. 10 Co. 134. Cafe of

But notwithstanding the King's prerogative in seas and
navigable rivers, yet it hath always been held, That
a subject may fish in the fish, which being a matter of com-
mon right, and the means of livelihood, and for the
good of the commonwealth, cannot be restrained by grant or
preference. 8 Ed. 4. 18, 19. 
Dun, Conn. 40. Pik.

4. Mod. 105. 8 Sall. 637.
Also 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 grafit. 10 Co. 318 V. Matheux.
Sall. 357. 8 S. & C. P. H. 40. Co. 8.

Edition of Salmon Fisheries in the River, &c. by the King.

The King, as a perpetual foe and acknowledgment of
his dominion of the seas, hath several creatures re-
ferred to him under the denomination of royal creatures,
as frogs, Burgesses and whites; all which are natives of
seas and rivers.

It is also agreed, that the King has only a preroga-
tive in beasts and light-houses; and that he may erec-
t any such, and in such places as shall be most convenient
for the safety and preservation of fish, mariners and
navigation; also it is to be the better opinion, that
this being for the publick utility, and one of the preroga-
tives vested in him, he may erec them without the safety of
the whole realm, he may erect such beacon, &c. as well
in the soil 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. 92. 2 Rid. 114. 3
Inf. 204.

Also it is clear, that the subject hath not any power
to erect any such beacon, &c. without the King's licence
and authority for that purpose. See the authorities Jupra
and Carter 92.

But by the 8 Eliz. it is enacted, * That the master,
wardens and affiants of the Trinity house of Department
Stow, shall and may, and may commit and use time to time at their
own expense and phage, and at their costs, make, erect
and set up such and so many beacons, marks and lignts
for the fish, in the sea shores and uplands near the sea
coast, or forlands of the sea only, for sea-marks, as to
them shall seem meet; whereby the dangers may be avoided,
and the fish may better come to their parts; and all such beacons, marks and lignts fo by them to be
erec, shall be continued, renewed and maintaanted
in time to time at the costs and charges of the said
matter, wardens and affiants.*

By the Common law the King hath an unbounded
right to ships; and his prerogative herein is founded.
on the dominion he has over the seas; and being sovereign
thereof, and protector of ships and mariners, he is intitled
to the rendition of the goods of the merchant; which is the more
reasonable, as it is a means of preventing the barbarous
custom of destroying persons who in shipwrecks approach
the shore, by removing the temptations to inhumanity.


It is clearly agreed, that by the Common law the King
has a prerogative in, and is intitled to, all royal mines
of gold and silver and treasures of gold and silver hid in
the earth; and that he is intrusted 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 bitttering
and commerce is committed to his care. 128. 2 Rad.
1656. 5 Co. 114. 1 Co. 145.

On this principle is given to the King as a necessary
consequence of the power of war and peace; for
there can be no wars made without the expense and con-
sumption of treasure. Plow. 315.

Besides it was thought, that if any other persons had
power of mines of gold and silver, they might by these
means frustrate the country's and their own service, and reed their
authority from the King which was defeated in his hands
only. Plow. 316.

All derrile goods, and in which no man hath a pro-
erty, belong to the King as well as derrile lands; fo
of extraregional tithes, though things of an ecclesiasti-

5 Co. 18. 2 Inf. 645.

So if a person dies intestate, and without kindred, his
goods and chattels belong to the King; and wherein
the usual course is laid to be for a person to procure the King's
letters patents, and then the ordinary admits the patente
for administration. 4 Sall. 57.

All the goods willed, that belong to the King, and
are in his hand, 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 state 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 purMahon the fish
and the goods willed, the owner may retake them;
also upon an appeal of felony, the owner is in
right of a writ of reliction; and as a further en-
rangement for the prosecution of felons, by the 21 H. 8
8. 11. it is provided, that if the party comes in as evi-
dence on the indictment, and attaint the felon, he shall
have a writ of reliction awarded by the judge of all
4 Car. 16. 104.

3. Of the King's prerogative over the persons of his sub-
jects, in restraining them from going abroad, and commut-
ing them to return hence.

All persons born in any part of the King's dominion
and within his protection are his subjects, and also tho
born in Ireland, Scotland, Wales, the King's plantation
or on the English sea; who by their birth owe such an
inseparable allegiance to the King, that they cannot
the act of their renounce, and their subjects as
are. 20 Co. 1, 92. Calvin's Comment. p. 32.


All the subjects of a foreign prince coming into Eng-
land, and living under the protection of our King, may
in respect of that local likeness which they owe to
him be guilty of high treason, and indeed that they em-
ploy dominium regem (the words naturalem dominium jus
less omitted) did compacts, &c. contra legitime fac deba-
tum, and it is said, that even an ambassado commit-
ing treason against the King's life, may be condoned
and executed here, and that for other treason he shall
be hanged at home. 3 Inf. 4, 5. Dyer 145.


But until such laws given by the conquering prince
the laws and customs of the conquered country the
kings or their successors are contrary to our rel-
ca, or enact any thing that is called in fo, or a
silent; for in all such cases the laws of the conquered
country shall prevail. 2 pl. 757. 75.
PRE
If there be a new and uninhabited country found out
English subjects, as the law is the birth-right of every
behave, wherever they go they carry their laws with
and therefore such new found country is to be
governed by the laws of England; though after such coun-
try shall be obtained, that then such a part of the
kingdom of England without naming the foreign plantations, will
be joined them. 2 P. Will. 75. 2 Salk. 411. like
oint.
By the Common law every subject may go out of the
kingdom for merchandise or travel, or other causes, as
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 prohibi-
tion; as by laying on embargoes, which can be only
one in time of danger, or by writ of Ne exeat Regno,
whic, from the words Quaemodotum habis & exi
te, which means what thing have you done, and
by writ, but is never granted universally, but
to a particular person, upon oath made that he
in go out of the realm; indeed Fitzherbert says,
that the King may restrain his subjects by proclamation;
affirms as a reason for it, that the King may not
where to find his subject, fo as not agree be-
12 Co. 33. 11 Co. 92. Fitz. N. B. 89. 2 Inf. 4
As the King may restrain any of his subjects going
abroad, in like manner it is clearly agreed, that the
King may command them to return home; and that the dif-
veloping a privy feed for this purpose is the highest com-
mand of the King himself directed to the party. 2dly. The
and is, that he shall return upon his faith and allegiance,
which is the strongest compulsion that can be used,
ily. The thing required by the King is the principal
of a subject, viz. to be at the king's service. 1 Dyer 128. 6
Law 44. Mar 109. 3 Inf. 179.
The punishment for this offence is, the seizing the
arrest, till he return; and of this there are several
instances in our books. And when he does return he
shall be fined by a neck. 1 H. 8. P. C. 59. 60.
which, it was said at the bar before the King's Council,
which was an eminent Common, were sent to him
but the messenger in endeavouring to serve him
with his letters, being obstructed, beat and abused
by their servants and attendants, a certificate was made
of this, and their lands and tenements feized. 1 Dyer 176.
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
fefts they were intitled unto as executors to the Duke;
when in reality it was on account of the religion ela-
sihed by Q. Mary, and living with other fugitives
for the protection of the Palfgrave of the King in Ger-
many, who was an eminent Calsilung, were sent to him
by the King, but he quitted in endeavouring to serve
him with his letters, being obstructed, beat and abused
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by their servants and attendants, a certificate was made
of this, and their lands and tenements seized. 1 Dyer 176.
PRE
The King's prerogative in relation to Civil and Eccle-
siastical 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 prerog-
itive to take care of the due execution of them. Hence
all judges must derive their authority from the crown,
by some commission warranted by law; and must exerc-
ise it in a lawful manner, and without any the least
deviation from the known and stated forms. Titia.e. 17.
Co. Li. 99. 6. 144.
So although the King is the fountain of justice, and
influenced with the whole executive power of the law,
et he hath absolute power to create all officers,
and to make and 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 that the only Duke, domination or change
by act of parliament. 4 Inf. 164. 2 Inf. 54. 472.
From the inherent right infebrable from the King to
distribute justice among his subjects, it hath been held,
that an appeal from the life of Men lies to the King in
council, with a reference to the Court of King's
of Men of 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 de-
ceived, rather than the subject should be deprived of a
right infebrable to him as a subject, of applying to the
The supremacy of the crown of England in matters
ecclesiastical, is a most unquestionable right, which, as my
Lord Hale says, may be proved by records of undoubted
truth and authority; and though, as he says, the pope
made great usurpations and incroachments on this right,
yet there were many instances of great exceptions; and
those incroachments are now pared off by the statutes 25 Hen. 8.
cap. 15. 20. 21. and 26 Hen. 8. cap. 1.
So that the King of England does not recognize any
foreign authority superior or equal to him in this
kingdom, neither do the laws of the emperor or pope of
Rom. as such, bind in the kingdom of England; but all
6 X
192
P R E

the strength and obligation that either the papal or imperial laws have obtained in this kingdom, it is only because they are and have been received and admitted in this kingdom, either by consent of parliament, or by immortal usage and acceptance in some particular courts and matters, and not otherwise. 1 Hol. Hist. P. C. 16.

The King therefore is said to have two jurisdictions, one temporal, the other ecclesiastical; the latter of which is derived from the Common law, though the form of the proceedings, and the coercive power exercised in the Ecclesiastical courts, is after the form of the Canon and Civil law, and this being indulged to them, the judges of the Common law will give credit to their proceedings and consistence in which to show a jurisdiction, and believe them consonant to the law of holy church, alto against the reason of the Common law; and if there be a gravamen it must be redressed by appeal.

1 Show. Rep. 218. 1 Rol. Abr. 530. 4 Co. 29. 7 C. 42. 7 Co. 7. 2 Vent. 43.

The King, as the fountain of justice hath an undoubted prerogative in creating officers, and all officers are said to derive their authority mediatly or immediately from him; those who derive their authority from him are called the officers of the crown, and are created by letters patents; 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. Dyer 176. 2 Rol. Abr. 152. 4 Co. 32. 2 Inf. 425. 540. 12 Ca. 116. 1 Rol. Rep. 206. Show. Parl. Co. 111. 1 L. 219.

But this all such officers derive their authority from the crown, and from whence the King is termed the universal officer and disposer of justice, yet it hath been held, that he hath not the office in him to execute it himself, but is only to grant or nominate; nor can the King grant any new powers or privileges to any such officers, but they must execute their offices according to the rules established and preferred them by the law. Ca. Li. 3. 115. 2 Vent. 270. 4 Inf. 125. 6 Ca. 11. 12.

Neither can the King create any new office inconsistent with our constitution or prejudicial to the subject. 2 Inf. 540. 2 Sid. 141. Mor 868. 4 Inf. 200.

And on this foundation it was held, that an office created for the furtherance of a lawful end, and for the public benefit, is not void. 2 Rol. Abr. 152. 4 Co. 32. 2 Inf. 425. 540. 12 Ca. 116. 1 Rol. Rep. 206. Show. Parl. Co. 111. 1 L. 219.

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A general war, according to my Lord Hale says, it is either war in two kinds, 1. Bellam folemni denunciation. 2. Bellam non folemni denunciation. The first is, When war is solemnly declared or proclaimed by our King against another prince or state, which is the most formal solemnity of a war now in use. 2dly, When a nation flips suddenly into a war without any solemnity, which happens by granting of letters of marque, by a foreign prince invading our coasts, or feizing upon the King's navy at sea; and hereupon a real, though not a solemn war may and hath been made, and therefore to prove a nations to be at enmity with England, or to prove a person 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 Hol. Hist. P. C. 163.

5. Of the King's prerogative to relate to his debt.

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 distrained 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 pledge. Goods and chattels. By order of the Common law, the King for his debt had execution of the body, land, and goods of his debtor; this is an act of grace, and retains the power that the King before had. 2 Inf. 19. Prerogative is disfrain'd. It was resolwed by the court, that this act of grace was a pendement, nor can they extend to forfeitures in a bond or recognizance, if they may be so called, being bound themselves equally with the principal, as forfeitures to perform covenants and agreements are in like manner; but to pledges and manuacles only, who by express words are not refinable, unless the principal become insolvent, and so are conditional dependents only, who, as to the act has always been construed, and the words themselves imply as much. 37. Mich. 16 Car. 2. Attorney General v. R. C.

By Stat. 5 Hen. 3. c. 15. The King's debtors dying, the King shall be served before the executor. 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. 5 Hen. 3. c. 15. enacts, That the heriour having received the King's debt, upon his next account shall make a new record of the same; and another, and more times to much the debtor, and to make fine at the King's will. And the heriour and his heirs shall answer all monies that they whom he employed do receive, and if any other that is answerable to the exchequer by his own hands do so, he shall render threefold to the plaintiff, and make fine as before. And upon payment of the King's debt, the heriour shall give a talley to the debtor, and the process for levying his estate shall be flawed him upon demand without fee, or pain to be grievously punished.

The King's debt. Under this word debt all things do to the King are comprehended, and not only debts in the proper sense, but duties on things due, as rents, fines, subsidies, and other duties to the King received or levied by the heriour; for debt in its large sense signifies whatsoever a man doth owe; and debet debere durante domine, debets debitos debere, debetur minam quod certum, debet debere, maxime in causis domini regis. 2 Inf. 198. Stat. Ed. 4. 7 Ed. 12. 13 Eng. 1. 3 Stat. 5 Hen. 3. 12, 13. enacts, That beasts of the King's possessions shall not be distrained for his King's debt or so as others may be found, upon such pain as is elsewhere ordained by Statute (viz. by the Statute De distrificatione), 51 H. 3. 4. 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 be levied in such manner that he and that does otherwher be grievously punished.

This is an act of grace, and upon this act there lies writ directed to the heriour, commanding him to receive surety according to this act, which if he refuseth, an at tachement lies against him, or the party offering surety; according to this act, if it be refused, may have a action. 3 Stat. 5 Ed. 3, Stat. 5, cap. 19. enables a common per son 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 Dederigges, J. 4. 300. cites 43 Ed. 3. Decies annum 12. Stat. 33 H. 8. cap. 30. sect. 2. enacts, That all obli gations and penalties concerning the King and his heirs
made to his or their issue, shall be made to his Heirs,
and to his heirs, in his or their names, or names of
the yeefes, demises regi, and to no other person to
his issue, and to be paid to his Heirs, by these yeefes, fli-
emed demises regi hered. feel evidences fuit, with
other yeefes used in common obligations, which oblige
him, and which shall be lawful to execute.
None other is to be charged, but fuch as were liable
to the bond when it was made; per Stat. Sav. 10.
Str. 22. Eliz. Parker's cafe.
An obligation for performance of covenants is within
his act, after that the covenants are broken. Rolved.
by proc. A. 45. c. 49 Eliz. in the A. of
S. C. cited, Hard. 447. Poff. 10 Car. 2, in cafe of The
By fait. 3. of the faid act 33 Hen. 8. c. 39 all fuch ob-
ligations required in a pledge, or in any of the laws of
King. 
Sect. 7. Directs debts to be freed for in proper courts.
Sect. 15. And every of the faid courts are impowered
to fuch fines, penalties, and amercements, upon par-
ties, thiefs, offendors and other perfons, for their defaults,
temptations, negligence or misdemeanor, as to the faid
obligation. And in the fai'd courts, actions fuit from offendors.
To which end all fuch courts fball be by due examination of
writings, readings, proofs or fuch other way as by the
feid fuch courts fball be thought expedient.
Sect. 25. And in all actions and fuits in any of the
courts afofaid for any debt due to the King by reafon
of any attainer, outlawry, forfeiture, gift of the party,
or his heirs, or his issue, or from whatever fource, in any
fequeftration, fines, penalties, or amercements, upon par-
ties, thiefs, offendors and other perfons, for their defaults,
temptations, negligence or misdemeanor, as to the faid
obligation. And in the fai'd courts, actions fuit from offendors.
To which end all fuch courts fball be by due examination of
writings, readings, proofs or fuch other way as by the
feid fuch courts fball be thought expedient.
Sect. 26. If any fuit be commenced or taken, or any
proceeds be hereafter awarded for the King, for the recov-
ery of any of the King's debts, then that the fuit falue
shall be fufficient in law to fwear and allege generally, that the
party to whom the faid debt did belong, fuch a year and
fey did give the fame to the King, or was attainted,
attained, &c. whereby the faid debt did accrue to the
King, and the fame matter fo to be preamble and alleged
generally fball be of the fame force and effeét, as if the
whole heir be, which faid ancestor or ancestors was, or
shall be indebted to the King or to any perfon or per-
sons to his issue, by judgment, recognition, obligation, or other
specialty, the debt whereof or shall not be contented and paid;
that then in every fuch cafe the fame manors, &c. the
sight and the reft to be take in or perfon, or in the
hand, to the hands, felli of the debtors, and the faid ma-
 nors, &c. have heretofore or hereafter fball defend,
revert or remain in fee-fime or in fee-tali, general or
special, by, from or after the death of any of his or their
ancestor or ancestors as heir, or by gift of his ancestors
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ancestor or ancestors as heir, or by gift of his ancestors

The
The issue in tail (the land being in his hands) is also liable in either of the said four cafes, but not the bond fide alienate it in tail; for the words of the flature do not extend to this alienation; the Common law did not help the King in these cafes; but the statute helps the King in the said cafe againf{t the issue in tail.  *Jen. 226, pl. 99.*

S.P. 1600. vid. 285. pl. 19.

The issue in tail shall not be charged by this flature for the non-pieffion of reconditie of the tenant in tail by proclamation, by the flature 25 Eliz., but otherwife it had been if it had been convicted by the 23 Eliz. 1 Kel. Rep. 94, Mich. 22 Jac. 3 R. in cafe of the King v. Daler Flyger, cited as resolved Mich. 39 & 40 Eliz.

Cafe such flature] By the express purview of this act, the land shall be solely extended as long as it is in the possifion or reftin of the heir in tail; for this act says, That in every cafe the fland 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 possifion of the heir in tail, which he could not do before; but the King cannot extend the lands of the alienation; for the flature does not extend to this, and the makers of the act have reafon to favour the purchasers, farmers, &c. of the heir in tail, more than the heir himfelf; for they are strangers to the debts of the tenant in tail, and they came to the land bona fide, and upon good confidence. *7 Rep. 21. b. Trin. 41 Eliz. in Sent. in Lord Anderfon's cafe.*

The fame matter] If the goods and chattels of the King's debtors be fufficient, and can be made appear to the fleriff, whereupon he may levy the King's debt, then ought not the fleriff to extend the lands and tenements of the debtor or of his heir, or of any purchaser or tenant. *2 Inf. 5.*

Sec. 28. The King fhall not be excluded to demand his debts againft any of his fubjefts, as heir to any person indebted to his Highnefs or to hisufe, albeit this word heir be not comprised in fuch recognifance or fpecialty, or that fuch perffons fay, that they have not any reftitutio to them defended, but only fuch as be in- talled 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-fimpie were exten- dable at the Common law in whatsoever hands they came, and therefore it seemed to them that the obfervation of which is made in this act, was reducidion unvi juris againft the issue in tail. Re- folved, 7 Rep. 21. b. Trin. 41 Eliz. in fent. in Lord Anderfon's cafe.

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. affigned the obligation in which W. was bound to him, to the Queen, and upon this pro- ceeds was made againft 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 allegation had been made in the life-time of the father, and then the father had died, the heir fhould be discharged, but the son may be charged as executor or administrator, &c. *Sav. 2. Pach. 22 Eliz. Warren's cafe.*

Sec. 29. Provided, That the King may at his liberty demand his debts of any executors or administrators of any person indebted, if the executor et al. have affized. *Sir Richard Cavender's,* late trea- turier of the chamber to King Henry VIII. in 1507. who was indebted to the King, upon which procefs was made againft those who were tertiates of the said fad f. S. tempes confellions scripti præfè note made to the said Sir Richard. *Pr. Monmouth Ch. 28.* The tertiates are not chargeable in this cafe, but the heirs and executor. *Pr. Shuttle second Baron.* If an obligation be made to the King, it fhall be of the fame nature as a fttute flap to all intents, by this act, but obligations made to other perffons to the use of the King, shall be exentutit to the obligor, his heirs, executors or administrators, and not against other perffons, but if J. N. be bound to J. S. and J. S. affigns this to Sir Richard Cavender's, and be over to the King, no procefs shall be made thereupon, which the court and all the clerks agreed. And it was held, that the obfervation of which commonly makes feoffment of lands, fuch fefioles fhall be charged otherwise it is of purchasers before the obligation made in cafe of the King. *Sav. 12. pl. 33. Pach. 22 Eliz. Annt.*

Sec. 30. If the said hereditaments fhall be evicted out of the possifion of fuch perffons by juft title without fraud, the hereditaments fhall be chargeable as is abovefoaiid; then all fuch hereditaments fhall be acquired of the fame debts.

B. was indebted to the Queen, for the payment of which debe 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. The said B. exhibited his bill in the Exchequer-chamber, praying that the equity of the cafe might there be examined. Before any fiuer made W. pay the debt, and then de- manded judgment if the court would hold further pleas, ininfuch as the caufe 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 caufe, and so it was done. *Sav. 15. pl. 39. Pach. 22 Eliz. Sir Thomas Fladger v. Wildho:fe.*

Sec. 31. If any perffon of whom any fuch debt shall be demanded, flew in any of the fad courts fufficient matter in law, reafon or good confidence, why fuch perffon should not be charged with this debt, and yet fuch matter so fewed be sufficiently proved, the said courts fhall have power to allow the proef and acquit all perffons fo impeffed; any thing in this act to the contrary not-withfanding.

*Sufficient matter in law.* This profeis does not give leight only to him who has matter in good confidence, but also to him who has good, perfct and fufficient caufe, and matter in law, reafon (and then comes) good confidence; and without quefion the first words, viz. caufe and matter in law fhall extend to all the debts of the King, and proceeds thereupon, as well at Common law as upon this act. And the concludion of the faid branch does not make againft it. For the cafe thereof was, that he should plead matter in law or good confidence, and that nothing contained in the fad act fhould be an impediment thereto. *Resolved per cur. rep. 19. b. Mich. 39 & 40 Eliz. in Sir Thomas Cecil's cafe.*

*Some facts fuddled against Sir W. H. as heir to the King. 100l. H. was in cafe of feitures by the King Edward VI. by the faid M. H. the fteriff returned fure fisci, 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 difcharge of the recognifance acknowledged, all which he threw away in a bill in Englifh in the Exchequer in the name of the faid B.; upon which, upon conference had by Manningham and the other Baronets, with the two Ch. he was disfranchised of the faid recognifance. 7 Rep. 20. a. in Sir Thom- as Cecil's cafe. As 3 Rep. Trin. 37 Eliz. Sir William Herbert's cafe.*

*In plea (fag or good confience).* A. obtained of the King a Priev feal, whereby the forfeiture of certain re- cognifances for appearing at the felions, amounting in the whole to 800l. was granted to her. And it was now made a quefion, Whether the court might compound thoef for fefures by virtue of their Priev feal which was granted before the Priev feal and grant to A.? And it was doubted whether the faid Priev feal 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 thefe debts by virtue of this flature. And the cafe in quefion feemed a hard cafe to the court, because the party him- selfe, as he faid, was writing the party to fign the faday very early before they ought to have appeared, that they were disabled thereby to appear. *Hard. 334. Mich. 15 Car. 2. in fatis. *Jfl.'s cafe.*

W. put 100l. on an interest of feoffe, and took bond in the name of one J. who became fae feoff, and now the plaint it was relieved against the King.
Cing upon this truth, in equity upon this statute. Secured. Whether this statute extends to any equity against the King, otherwise than in case of plea by way of lifecharge? But it was likewise decreed in that case that he plaintiff should be freed harmless from all others.

Hardt, 176, Hill, 12, 26, 13, 16, 21, William Law &/or Mr. Floy and Sir William Cooper.

And the matter so framed shall sufficiently proved Sire factus idid against T., the father, and T., the son, to how wherefore they did not pay to the King 1000,, or the mean profits of certain lands held by them from his Majesty, for which land judgment was given against him in the common pleas, and the said profits came to 1000., upon which inquisition this factus idid occurred; whereup 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, and also the judgment for the said lands was given against his father and for default of sufficient pleading, and for not the truth of the fact; and he pleaded this statute, which he pretended aided him for his equity: Whereupon the King demurred. The case probably ought to be sufficiently proved, as here is nothing but the allegation of the party, and the demurrer of Mr. Attorney for the King; and if the demurrer be in law an admission of the allegation, and if a sufficient proof sufficient within the statute, is to be advi- ered upon; and for that point the court itself. If the factus idid of this court have execution of execution, which within this act ought by pretence and allegation of the defendant to be discharged for matter in equity, and the defendant pleads his matter in equity, *and the King upholding this not to be equity within his statute, demurs in law, whether that demurrer be an information of the allegation within the statute so not? Adjudicator. Long 51, Poch. 7. Sec. in the exchequer, Trallyp's case. Sec. 33. This act shall not take away any liberties belonging to the dutchy and county Palatine of Lancaster. Sec. 34. Proceeds and executions for debts in the court of Exchequer, as made in the Exchequer by such ficer as having been used, as by this act is limited. Stat. 13 Eliz. cap. 4. sect. 1. enacts, That all the lands, tenements and hereditaments, which any accomp- any of the Queen, her heirs and successors, hath while a remains accountable, shall for the payment of all its heirs and successors be liable, and put in execution in like manner, as if such accomplishment had found by word (having the effect of the statute) to her Majesty, her heirs and successors, for payment of the same.

The Queen by her letters patents, granted Castellu uti- liguratum & fealum de fe, within such a precinct; one who was indebted to the Queen is feo de fe within the precinct. It was the opinion of all the Barons, and so ruled, that notwithstanding the grant by the said letters patents, the Queen shall have the goods for satisfying her debt. 3 Le. 113, pl. 161, Hilk. 26 Eliz. in the Exchequer. Act 25 Eliz. 128, 127, 2. C. Queen and Bishop of Saron and Chester, and there per C. Mansfield Ch. 8, the patent does not extend to have the goods of feo de fe against the Queen for her debt, because it wanted the words (lietu tanget nos,) but he agreed, that if the lands of the felon be liable (sufficient to answer) all the debt of the Queen, which lands are in extent, and leave the goods to the patentee. And as to a petition of Chester for 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 arrears of receipts by his office received, and such receipts be discharge of the extent, and by reason of this statute, but as to another office ac- cepted after the conveyance of the land, the arrears of which shall not be charged 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, afterwards purchased the inheritance; afterwards he be-
Preteritum. The preterit; the choice or chan-ced, because it was the place appropriated to the bish-shop and priests, and other clergy, while the laity were confined to the nave, or body of the church. Id. ib.

Prescription. (Prescriptio.) Is a title acquired by use and time, and is allowed by the laws, which is beyond the memory of man. Kitchen, fol. 10. &c.

Prescription is, when for continuance of time, Ultra memoriaibus, a particular person hath particular right aga-ainst another particular person; with whom agrees, Co. 12. 92. and Ca. et. lir. 149. But as in the Civil law, for instance in the Common, Prescription may be in a shorter time, at least in some special cases: As for exam-ple, where the statute 1 H. 6. cap. 9. faith, That all ac-tions public, must be sued within three years after the offence committed: And the stat. 7 H. 8. 3. that four years being past after the offence committed in one cafe, and one year in another, no suit can be舀n. And the stat. 31 Eliz. cap. 5. faith, That all actions, be-brung upon a statute, the penalty whereof belongs to the King, shall be brought within two years after the offence committed, or else be void: And the stat. 39 Eliz. a 1. faith, That actions brought after two years by any com-misary or receiver, but within two years by the King alone, for decay of lands, shall be of their force and ftrength against any such statute, and escapes unqual-ified for two years, or three, (of the two latter of the three forementioned statutes,) may justly be said to have pre-ferred against that action. The like may be said of the statutes 5 Ed. cap. 1. which faith, That all offenses committed in that ordinary times, made in the thirteenth year of Eliz. cap. 2, are inascivable before both judicis of this court and office within a year and a day after the offence com-mitted: Also the title that a man obtaineth by the pas-sing of five years, after a fine acknowledged of any lands or tenements, may justly be said to be obtained by pra-recipitation of title, and not by prescription. The statute made 8 R. 2. cap. 4. faith, That a judge, or clerk, committed for fine for springing of pleas, may be fined within two years: The two years being past, be preferred against the punishment of the said statute: And whereas the statute 11 Hen. 7. says, That he who will complain of maintenance or em-barrassments whereby he is committed by a jury, must do it within six days; those six days ended, the parties preferible: And divers other statutes have the like limitation of time, wherein may arise a like prescription. Cowell. See Cifer-tions, and 17 Vin. Abr. tit. Prescription.

Presentation, (Présentatio.) Is used properly for the act of a patron, offering his clerk to the bishop, to be dispensed from the form of his gift: the form whereof see in Reg. Orig. fol. 371. And prefixed is to the title of the clerk who is so presented by the patron. Cowell, edit. 1727.

The examination of a clerk presented to a benefice, belongs to the ordinary, Art. Civ. 9 Ed. 2. fi. 1. c. 1.

The King's prefentments in another's right releaved, 25 Ed. 2. fi. 3. c. 1.

A limitation of the King's prefentment in another's right, to three years after the prefentment made, by 14 Ed. 3. fi. 4. c. 2. repealed, 25 Ed. 3. fi. 3. c. 2.

The King's title to prefentment in another's right, to be examined, 25 Ed. 3. fi. 3. c. 3.

The ordinary or his clerk may counter-plead the King's title, 25 Ed. 3. fi. 3. c. 7.

An incumbent put out by the King's prefent may purifie his remedy at any time, 4 H. 4. c. 22. See Ash-boton, Bennett, and 17 Vin. Abr. tit. Preservation.

Presumption, Is a mere denunciation of the jurors themselves, or some other officers, as justices, constables, seers, surveyors, &c. (without any information) of an offence inquirable in the court whereunto it is present-ed, and 49 Ed. 4. c. 4. p. 457. 39 Ed. 7. fi. 8. c. 7.

Presume, (Presumere.) In a legal sense means the King's Lieutenant in a province or function; as the Pres-ident of Wales, &c.
The President of the Council. "Relates to the function of the person, and is the fourth great officer of state: he is as ancient as the reign of King Zebediah; and hath sometimes been called Princeps Constantinianus, and other mens Capitulis Constantinianus. 'The office of President of the Council was ever granted by better patent than at that time in the house; this, though but prestantianum, is as a roof. 2. Probable, which hath but a small effect. 3. Let it, for temeraria, which is of no prevalence at all: So a cafe of a charter of feemifal, if all the witnesses to a deed be dead; the violent prestantianum, which stands as a proof, is continual and quiet possession. Co. en Lit. 51, c. 1, sect. 1. Prestantianum floto in dubia, it is docti- of, yet accounted Veritas, comes, quoniam in contrar- num nulla est probatio, ut regale se habet, fubitur pra- mption done procrater in contrarior. Cowell, edit. 1727. If the election be far beyond the death of the an- cestor, and the youngest enters into the land, he is not accounted in law a defier; because the law presumes, that he prefers the possession for his brother; but if un- on his brother's return he keeps him out of possession, the he looks upon him as a defier. Per Deodatus, at 68. 16. a. 1. Cowell, edit. 1727. Where the law intruits perfon, as (justice of peace) with the execution of a power, the court ought to give redit to them in the execution of that power; though they make a false return whereby the party and justice are abused, they may be punished. 12 Med. 382. Hill. Geo. R. B. The Queen v. Symonds. The Desert, Having extrajudicial possession. W. 3, c. 2, sect. 1. After- sitting his right punished with praetorians. 7 & 8 Will. 3, T. 27, sect. 2. 6 Ann. c. 7. sect. 2. Corresponding with his, or his sons, treason, 13 W. 3. c. 3, sect. 2. 17 Geo. 1. c. 39. Securing his poss on his landing, or attempting to land, how rewarded, 1 Geo. 1. f. 1. c. 1, sect. 9. 2 Ann. c. 13, sect. 25, 1727. Pictetian right, or title, (fet praeferam,) is where he is in possession of lands or tenements, and another who out, claims it, and fues for it; here the pretext is right and title is laid to be in him who doth claim and sue. Vietium injustiæ. Are those goods which accure to the church in the concept is conveyed. Grotius, edit. 1727. Price. See Clauses. Pide, in the lordship of Redley, in the county of Gloucester, is used and paid unto this day, as a rent to the lord of the manor by certain tenants, in duty and acknowledgment to him, for their liberty and privilege of fishing in the river Severn for lampreys; yea, for brevity, being the last syllable of lampreys (as they were anciently called) and getul, a rent, or tribute. Taylor's History of the county, cap. 9, fol. 112, 113. Priests. See Papits, Reclants, Rome. Plumes. Is a duty due to the mariners and sailors, for the loading of any ship. To the discovering that from any haven, (mentioned in 32. H. 3, c. 2, sect. 1.) at some place, 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 an ancient. Primitius titulus Angliae were the nobility of England. After the law of their name. Primitius featus, (Prima featus,) The first possession, or seis was heretofore used as a branch of the King's prerogative, whereby he had the first possession, that is, the entire profits for a year of all the lands and tenements, where his nearest relations (that held of him in capita) died seised in his demesne as of fee, his heir being then at full age, until he do his homage, or if under age until he were of age. Stanoff, Prerog. cap. 3. and Bradten, lb. 4. treat. 3. c. 1. But all the charges arising by pri- mifer featus are taken away by the statute 12 Car. 2. c. 24. Plume, or Plumes. The title of an elder brother in the right of his brother, and by which Ca. upon Lit. says, is, Qui prior est tempore, pe- ter, filius; affirming moreover, That in King Alfred's time, knights fees defended the eldest son; for that by the division of such fees between males, the defence of the realm might be rendered weaker. See Judex Dederige in his treatise of nobility fact, pag. 119, it was anciently ordained, That all knights fees should come unto the eldest son by suc- ceSSION of his homage, 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 the fee hinging of any of the male children, to enable them to increase their families, for the better furtherance in, and increase of husbandry. Cowell, edit. 1727. Princæ, (Principes,) Is sometimes taken at large for the King himself, but more properly for the King's eldest son, who is Prince of Wales, as the eldest son to the French King is called Dauphin, both being born princes. Fier's Glory of Genefis, pag. 138. Before Edward the Second, who was born at Carnarvon, and the first English Prince of Wales, the King's eldest son was called Lord Prince. Stanoff, Prerog. cap. 22, fol. 75. See 72. H. 5, c. 37, and 35. Stow's Annals, p. 303. But Prince was a name of dignity long since abolished in England; for in a charter of King Offa, after the bishops had subscribed their names, we read, Brudanus Patriitus, Bimannus princes, and afterwards the dukes subscribed their names. And in a charter of King Edgar in Mon. Angl. tom. 3, pag. 302. Ego Edwardus Rex rotatus ob epif- cos meos Deoctos, &c. &c. And in Matt. Parv. pag. 155. Ego Helenus principes Regis pro viribus effeam praebes, & ege Turkeztus duo concedas. See King. Principia, (Principia,) An heirloom, which fee. It was also sometimes used for a moratory, or ofr forming —Item legem meam vocationem in Bay-Gelding, ut af- fortatur ante corpus meum in die fatum meum, non, nam Principii, ib. volun. Johannis Mareschel. 9 Hen. 5. in Urchenfield, in the county of Hereford, certain prin- cipals, as the belt belt, the belt bed, belt table, &c. pas to the eldest child, and are not liable to partition. Also do the chief person in some of the towns of Cheshire in is called principal of the house. Cowell, edit. 1727. Principal and accipial, The principal is the person who actually commits any crime; and the accipial is he who is affiling to him in the doing thereof. 2 Lit. 355. It seems to have been always an uncontested maxim, That there can be no accipials in high treason, or trefpass; also it seems to have been always agreed, That whatsoever will make a man an accipial before in felony, will make him a principal in high treason and trefpa; as battery, riot, rout, forcible entry, and even in forgery
forfeity and petit larceny. And therefore, wherever a man commands another to commit a trespass, who afterwards commits it in pursuance of such command, he feems by necessary conformance to be guilty of it, as if he held the direction, but that 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 Hare. P.C. 310.

It feems agreed, that whoever agrees to a trespass on lands or goods deth for his use, thereby becomes a principal in it. But that no one can become a principal in trespasses on the person of a man by any such agreement: Alfo it feems 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 againft him, which by reafon of such concealement cannot be executed. And if he cannot be punished as a principal, it is certain that he cannot be punished as an aceccary; because in such offences, all who are punished as partakers of the guilt of him who did the fact, must be punished as principals in the while. Yet if a man knowing that there is a warrant againft such offender, advise and persuade him to abfent himself, perhaps he may be indicafe for a contempt of the law in hindering the due course of justice. 2 Haw. P. C. 311. See Ancillary, and 2 Haw. P. C. 312. See Laws.

Prints, Property of engraved prints secured, 8 Geo. 2. c. 13.

Prio, Was he who was first in dignity next to the abbot. Cavell. edit. 1737.

Priority, (Priorior,) Signifies an antiquity of tenure, in comparison of another, which, though not absolute, and not to hold by a lord more anciently than of another. Old Nat. Brewn. fol. 94. So, to hold by posterity, is used in Stanw. Preer. cap. 2. fol. 11. And Crampen in his Jurisd. fol. 117, whith this word in the same fignification. The lord of the priority shall have the efficacy of the body, &c. And fol. 130. If the tenant hold by priority of one, and by posterity of another, &c.

To which effect, see also F. N. B. fol. 142.

Priority of debts and fruits. A prior fuit depending may be pleaded in abatement of a subfequent action or procution. A prior mortgage ought to be fift paid off, and debts fift due thowe it be of the same nature, as if the mortgagor advances his money before his debtor is incumbered, it is but reafonable he fhould be paid his debt before the discharge of the subfequent incumbrances: But debts fift due muft likewise be fift procutioned; otherwife in fome cafes priority will not be alowed. Comp. Attorn. 120. There is no priority of time in the judgments; for the judgment fift executed shall be fift paid.

It feems agreed, that wherever any fuit on a penal statute may be faid to be actually depending, it may be pleaded in abatement of a subfequent procution, being expressly avered to be for the fame offence. Neither will it be any exceffe to fuch a plea, that the offence committed in the subfequent procution 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 fuit pleaded as prior was commenced, fce to be material on the ifue of res judicata, if it appear in truth to have been commenced before the other, and for the fame matter. And if two informations be exhibited on the very fame day, it feems that they may mutually abate one another, because there is no priority to attach the right of the fuit in one informer more than in the other. Alfo it feems, that an information or bill the fame day that they are filed, may be fo fift paid to be depending before the other, and the funds upland be pleaded in abatement of any other fuit on the fame statute. And from the fame reafon it feems alfo, that a writ of debt may be fift pleaded after it is returned; becaufe then it feems to be agreed, that it may be properly faid to be depending; and whether it may not alfo be to pleaded before it is returned, so is.
Keeper of a prison permitting a clandestine marriage, forfeits 100 l. 10 Ann. c. 19. f. 176.

Penalties on refusal of the execution of process in the Act for Soutward, 9 Geo. c. 1. f. 28.

In Wapping, Surrey and other places preferred by the Grand jury, 11 Geo. c. 2. 22.

Prisoners to have liberty to fend for victuals, and provide their own bedding, 2 Geo. c. 2. 37. 3 Geo. c. 27. 29 Geo. c. 2. 28. Must petition before the end of the fist terms 8 Geo. c. 2. 24. f. 2. Their oaths, 21 Geo. c. 2. 37. f. 7.

The crown to grant the wardenship of the Fleet during the life of Thomas Bambridge, 2 Geo. c. 2. 32.

For building a goal for the western division of Kent, 9 Geo. c. 2. 12.

The Money for the King's Bench and Marshalsea prisoners, to be paid by the treasurers of the counties, and enforced by rule of the King's Bench, 11 Geo. c. 2. 22.

2 Geo. c. 2. 29. 2nd. 23.

No attorney in prison shall commence any suit, 12 Geo. c. 2. 13. f. 9 & 10.

Regulations of the prisons and imprisonment in Scotland, 18 Geo. c. 4. 43. f. 18.

The power of appointing the Marshal of the King's Bench, revoked in the crown, 27 Geo. c. 2. 17.

Persons retailing ale, in pritis to be licenced, 29 Geo. c. 2. 12. f. 26.

Prisoners not to be carried to taverns, &c. 32 Geo. c. 28.

Prisoners for less than 100 l. how to be discharged, 32 Geo. c. 2. 28. f. 13.

Prisoners compelled to deliver his effects, 32 Geo. c. 2. 18. f. 16.

Refusing to aliain his effects may be transported, 32 Geo. c. 2. 28. f. 17.

Prison-breaking. See Goal.

Privates, Directions for trying offenders by courts martial, 17 Geo. c. 2. 34. f. 26.

Going into ports in the British colonies, subjed to the 1st there, 29 Geo. c. 2. 34. f. 31.

Offences on board privates, punishable as on board the King's ships, 29 Geo. c. 2. 34. f. 33.

Crimes to be tried by a court martial of the King's ships, 29 Geo. c. 2. 34. f. 34.

Further regulations of privates, 32 Geo. c. 2. 25.

Prizes to belong to owners and captors, 32 Geo. c. 2. 25.

Privilege. See Deputies.

Privation. A craving or taking away, not commonly applied to a bishop or rector of a church, when by death, or other act, they are deprived of their livlihood or benefit. See Deprivation, and Est. c. 13. f. 349.

Privation, Insolvent, Is a woman is with child by her husband; but not quick with child. Wood's Inst. 562.

Privies. See Privy.

Privilege. (Privilegium,.) Is defined by Cicero in his treatises on the laws, fac to be lex privata bona negotii. It is, says another, Tit. Longus, 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. Kitchen, 248. 118.

Privilege is either personal or real; A personal privilege is that which is granted to a person, either by the court of the Common law, or by an act of parliament; or, for instance, A member of parliament may not be arrested, nor any of his servants, during the sitting 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 may, or is called to, go into any court or assembly to be held in those towns, or to prosecute in other courts; and one belonging to the court of Chancery cannot be sued in any other court, certain cases excepted; and Vol. II. No. 116.

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if he be, he may remove it by suit of privilege, grounded upon the statute 18 E. 3. 54.

Privilege is an exemption from some duty, burden or attendance, to which certain persons are invited, from a supposition of law, that the flxations they fill, or the offices they are engaged in, are such as require all their time and care; and that therefore without this indulgence it would be impractical to execute such offices to that advantage which the publick good requires. 4 Dall. 215.

1. Of privilege in suits allowed officers and attendants in the courts of justice.

2. Of the privilege of peers and members of parliament.

3. Of the proceedings in courts by and against privates intituled to privilege of parliament.

1. Of privilege in suits allowed officers and attendants in the courts of justice.

The officers, ministers and clcrks of the courts in Westminster Hall are allowed particular privileges with respect of their necessary attendance on those courts; they are regularly to sue and be sued in the courts they respectively belong to, and cannot, except in certain cases, be compelled to do so, which privilege arises from a supposition of law, that the business of the court or their clients would suffer by their being drawn into another, or that in which their personal attendance is required. 2 Stat. 1. pl. 30.

Andrison Ch. J. of C. B. brought a trespass by suit for breaking his house in the city of Westminster, against a citizen of the said city; the mayor and commonalty came and theretofore a charter granted by Edward VI. and demanded communion of pleas, but it was refused, because the privilege of that court, of which the plaintiff was a chief member, is more ancient than the patent; for the justices clerk being the master of the common law of this court ought to be here attending to do their business, and shall not be impeded or compelled to impede others elsewhere; and this privilege was given this court upon the original creation of it. 3 Lem. 149. Lord Andrison's case.

An attorney so long as he remains on record, shall have his privilege; and therefore where it was moved, that "S. shall put in special bail, being an attorney at large, and having discontinued his practice, the court said, that attorneys at large have the same privilege with the clerks of the courts. and are to appear de die in diem; and they were not satisfied that he had discontinued his practice. 8 Eliz. Cust. Attorn. 177. Tit. Bill 24. 1 Vent. 1. Sir John How v. Walley.

But where S. was arrested in B. R. and after the arrest he procured himself to be made an attorney of C. B. and prayed his privilege, it was disallowed, because it accused pendants bire. 2 Rol. Rep. 115.

In debt against the warden of the Fleet, by bill of privilege, he refused to appear; the court doubted how they could compel him, as they could not forejudge how the court, having an inheritance in his office; but it being discovered that he made a lease of his office, it was held, that he should not have his privilege, for that the leaee, and not he, was the officer during the lease. 2 Lem. 153. Gittinson v. Tyrrell.

So if the marshal of B. R. grants his place for life; the grantor has no privilege during that time. 1 Vent. 65.

A clerk of B. R. was sued in an inferior court for a debt under five pounds, and had a writ of privilege allowed; for the flat. 21 Jack. 1. cap. 23. never intended to take away the privilege of attorneys. Palm. 403.

In the court of Exchequer there are three forms of privilege: viz. As devisor. 2dly, As accountant. 2dly, As officer. Hard. 605.

S. was engaged in an action of battery in London, which he removed into B. R. and afterwards prayed his privilege of the court of Exchequer; and upon the prouee Baron's coming into court, and bringing the red book of the
the Exchequer, which showed that he was an elector, and so an accountant to the King, the privilege was allowed. Ay 40. Wilfrid v. Warrard.

If one holds of theTenures as of his manor, he shall not be in the privilege of the Exchequer for that cause; but if the King grants titles, and thereupon receives a rent nominate decima, and a tenure of him, there he shall have privilege. 2 Lew. 31. Lightfoot v. Butler.

On a plaint's being found out against the commissioners of the Treasury, the public kton of the Exchequer came into the privilages 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 Treasury had privilege of being sued only in that court; and the patent being produced in court which constituted the defendants, &c. and granted them the office of Treasurer of England, it was allowed, by putting them to be brought to write a writ of privilege; the court grounding themselves on the record before them. 2 Scott. 259. Lampen v. Sir Edward Dearing & al.

It hath been held, that the Treasurer of the Navy is as good an accountant; and that an accountant's privilege will hold against a special privilege in another court, as officer of the court or otherwise; but it not being alleged, that such an accountant is entailed upon his account; for that every accountant may be attached by the court to make up his account, and must attend for that purpose ante die in diem. Hard. 316. See Moun 753.

1 Inf. 23, 591. In (C. R.) against J. S. he pleaded to the jurisdiction. That none of the privy chamber ought to be sued in any other court, without the special licence of the lord chamberlain of the houshold, and that he was one of the privy chamber; on demurrer to this plea, the court overruled it with great reftoration, and awarded a Reformantium. Raym. 34. 1 Kch. 137. Barrington v. Tenenle.

It was agreed in Serjeant Sergis'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 these, because he is not confined to that court alone, but may plead in any other court; but it is otherwise as to attorneys or solicitors, who cannot plead in their own name in any other court but such as they respectively belong to; and that therefore a Serjeant at law is to be sued by original, and not by bill of privilege. 2 Lew. 129. 3 Kch. 42. Ay 86, C. 4. 3 Inf. 129. &c. 2 Inf. 21.

It was held, that a bill brought in C. B. against a Serjeant at law, for work done, he pleaded that he ought to have been sued by original, and not by bill; and on demurrer, the court held, that the case of a serjeant and prothonotary's clerk were upon the same foot, neither of them being bound to personal attendance, as prothonotaries and attorneys were; and that therefore he ought to have been sued by original, and accordingly gave a judgment for the defendant. Trin. 7 Gen. 2. Serjeant Girdle's cafe.

J. S. being arraigned by a writ out of C. B. brought his writ of privilege as clerk of the crown office; but it appearing that he was only a clerk to Mr. Ward (clerk of that office) immediately after, and not in the office, he was not entitled to the writ of privilege granted on motion; the court having agreed, That he had no more privilege than an attorney's clerk. 2 Scott. 287. Ward v. Lawrence.

A Serjeant at law, barrister, attorney or other privileged person, whose attendance is requisite in Westminster-Hall, may not sue in the office, and have the cause of action accrued in another court; and the court on the usual affidavit will not change the venue. Sol. 450. Mor 64. 2 Scott. 242.

But it hath been held, That if a privileged person be sued, and the action brought against him in the right court, after his privilege was granted him to have the cause of action accrued in another court; and the court on the usual affidavit will not change the venue. Sol. 450. Mor 64. 2 Scott. 242.

On a motion to discharge a rule which had been obtained for changing the venue, it appeared, That the plaintiff was a barrister and matter in Chancery, and that the court held that he had a privilege, by reason of his attendance, to lay his action in Middlesex, and therefore discharged the rule. 2 Lord Raym. 1556. Fitz. 40. 5 C. Barrington v. Hilts.

Of the privilege of peers and members of parliament.

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 public, and are always supplied amply, and to have sufficient property to answer in futis and in person. The reason why there is no such privilege on their grounds not to be arrested or molested in their persons. This privilege extended formerly to abbots, as it does to bishops, members of the convocation, and members of the house of commons at this day. 4 Inf. 24. Stil. 222. 253. Dyr 314. 1 Mod. 66. Bro. Eng. 3. 1 Dyr 275. Sedd's memorials 88, 103. Sir Stephen Dowel's journals 414. Finch 355. Dyr 60a. in margin. Nay 102. Moor 78. Stanford. P.C. 38.

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 such particulars as are useful in practice. That there is an other, as 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 87. &c. The only exceptions are, 1. a majestas ignorata, a pauci cognita. 4 Inf. 15. 3 Co. 63. 4 Inf. 23. 50. 363. Prince's Animad. on 4 Inf. 12. Cro. Car. 181. 604. 2 Lord Raym. 1111. See 1 Mod. 66.

This privilege extends only to the peers of Great Britain; 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 person as is a lord of parliament at the time; but it seems that an infant peer is privileged from arrest, his person being held sacred, &c. C. 84. 338.

The peers of Scotland had no privilege in this kingdom before the union; but now by the 23rd article of the union, 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 peers of England, excepting only that of sitting and voting in parliament. 6 Ca. 177. 1 P. Will. 582.

A peere's birth is intitled to privilege; so of a peere's marriage, and that as well during the coverture as after; but as a peere's marriage is said to lose her dignity by marrying a commoner, &c. If after such marriage she is intitled to any privilege. 2 Inf. 50. Bill 135. 242. 2 Cro. Ca. 224. Co, Lib. 16. 5 Ca. 75. Dyr 759.

It was held by my Lord Ch. J. Hilt, in the cafe of the Lord Banbury, that where a person is called by writ to the house of Peers, he is no peer till he fits in parliament, the writ giving him no nobility or honour; but that it was the sitting in the house of Lords, and attending himself with them that enabled him to blood; and that therefore, if the King or he die before a parliament meets, the writ is determined, and the party remains a commoner; but he held it otherwise in a creation by letters patents, by which the party is immediately noble without any other act or ceremony, and through the privilege, the dignity remains to him and his proficiency, according to the limitations in the patent. 6 Dec. Att. 229.

A member of parliament shall have privilege of parliament, not only for his servants, but for his horses, &c. or other goods gruntain. 4 Inf. 24. J. S.
7. S. brought debt for rent against H., who pleaded that he was tenant and servant to Lord Men, and prayed
his writ of privilege might be allowed him; the plaintiff
ensured; it was argued, that the matter of the plea
was against the Common statute law; but wr. 25, Ch.
3. 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. Bro. Evinct.

But privilege of parliament does not extend to high
treason, felony, breach of the peace, or fury of the
And therefore even an infidels for treason or felony,
terfals vi et armis, affialt or riot, proceeds 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
capitatis or exigent lies not against a lord of parliament. 2

If a peer of parliament be convicted of a diffidence or
force, a capitis pro fine and exigent shall issue; for
the fine is given by statute, in which no person is exemped.

So in debt upon an obligation against the Earl of Lin-
coln's, who pleaded roent of a peer, which being found
against him, the judgment was ido capitation; which on
a writ of error brought by him was objected to, that in
a capitation does not lie against a peer of the realm; sed
nullum aliquid; for by this plea found against him, a fine
is due to the King, against whom none shall have any priv-
ilege. Gr. 37, 269, 279.

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 inflicted 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
over-ruled, and writ was found 30000 l. C. 49.

The King v. Earl of Devonshire.

In the case of Mr. bishops it was infilled, that
peers of the realm could not be committed in the first
instance, for a misdemeanour before judgment; and that no
precedent could be shewed where a peer had been brought
in by a capias, which is the first process for a base miska-
menor; and they put in a plea in writing of their be-
ing peers, &c. but the plea was rejected. 3 Mod. 245.

Alfo peers of the realm are punishable by atttachment
for contempt in many instances; as for refusing a per-
f on arrested by due course of law; for proceeding in a
cauze against the King's writ of prohibition; for dis-
charging other when such was made, or for the liberty of
the subject are nearly concerned; and for other contempt
which are of an enormous nature. 2

Hawk. 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 a peer may be either challenged, or
strand himself, or be challenged by the party. Dyer 347.

In the case of Sir Edward Bainton, 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. 57, 61. 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 C. 49, 52.

If a peer be made fettled of a bafe court, or ran-
ger of a forest, he may from the dignity of his per
and the pretenion that he is engaged in the most
weighty affairs of the Commonwealth, exercise the
offices by deputy; though there are no words for this
purpose in his creation. 9 C. 49, 52.

So if a licence be granted to a peer to hunt in a chace
or forest, he may take such number of attendants with
him as are for the pursuit of the sport. 9 C. 49, 52.

A peer or lord of parliament cannot be an approver
for it is against Magna Charta for him to pray coroner.
3 H. 12, 25.

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 Hawk. P. C. 427.
In 

1. They are intituled to a letter of 

2. They have a knight to try an issue which concerns them. 

3. They are not to be arrested for debt, trespas, or any personal action. 

4. They are exempted from service of process, and other like processes. 

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 forests to attend upon the King, upon blowing a horn they may have a buck or doe, as the feast of the year may direct. 

8. There being power in the King, in the behalf of the King, to remit 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. 

In the case of Colonel Pit, the parliament was pro

rogued the 16th of April 1734; dissolved the 17th, and the new writs rose the 18th following, and the defendant Pit, who was a member of that parliament, was arrested on the 20th; one of the questions in the cafe 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 dilatory process came in; and if 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 intituled to after a dissolution of parliament. 

Trin. 8 Geo. 2. in B. R. Col. Pit's cause. See Stan. Rep. 985. and Reports in Time of Lord Hardwicke 16-17; 

3. Of the proceedings in courts by and against persons intituled to privilege of parliament. 

By the statute 12 & 13 W. 3. cap. 13. sect. 1. It is enacted, That any person 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 Canterbury and York, and the delevates, 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 servants, 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-assembled, and immediately after the dissolution or prorogation of parliament until both houses shall meet, and the said courts may after such dissolution, prorogation or adjournment, proceed to give judgment, and to make final decrees and sentences thereupon; any privilege of parliament notwithstanding. 

Sect. 1. Provided, That this act shall not affect the person 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 if any person have cause of action or complaint against any peer, such peer after such dissolution, prorogation or adjournment as aforesaid, or before any trial or action by parliament, or such courts as aforesaid, or in any of his Majesty's courts 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 intituled to privilege of parliament, after any dissolution, prorogation or such adjournment, etc. such person may prosecute such knight, citizen or burgess, or other person intituled to privilege, in his Majesty's courts of King's Bench, Common Pleas and Exchequer, by summons and dials or informations, or by original bill and summons, attachment and dials or informations, which the said courts are permitted to issue; it being entered on the record in court, and it being proved to the satisfaction of the court, that the person issuing such suit, etc. no person having cause of suit or complaint may in the time aforesaid exhibit any bill or complaint against any peer, or against any of the said knights, citizens or burgesses, or any other person intituled to privilege, in the Chancery, Exchequer or Dutchy court, and proceed therewith upon letter of summons 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 quash the estate of the cause, or issue his majesty's writ, or his majesty's process, against the continuance of privilege of parliament. 

Sect. 2. Where any plaintiff shall by reason of privilege of parliament be stayed from prosecuting any suit commence against such person, or any body by any statute of limitation, or non suiited, dimesified, or his suit discontinued for want of prosecution, but shall upon the rising of the parliament be at liberty to proceed. 

Sect. 3. No suit or proceeding in law or equity against the King's original and immediate deotor, for the recovery of any debt originally and immediately due to his Majesty, or against any person intituled to an absolute and unlimited privilege, to his Majesty for any part of his revenues, or other original or immediate duty, or the execution of any such process, shall be impeached or delayed by privilege of parliament; yet so that the person of such deotor or account, bearing a peer, shall not be liable to be arrested, or to appear, in any bill or process, for his suit, or any proceeding therein, but shall be tried by the King's bench, and be arrested, or be sent to jail, or in any manner be restrained, or any of the continuance of privilege, be arrested by any such proceeding. See the Stat. 2 & 3 Ann. cap. 18. 1 Geo. 2. cap. 24. 

Sect. 5. This act shall not give any jurisdiction to any court to hold plea of any real or mixed action in other manner; that court might have no power to file the same. 

It had been always held, that a peer is to put in his answer to a bill in equity, on his honour only, and not on his oath; but when he is examined as a witness, he must be sworn. 

Alfo if a peer is by order of court to be examined on interrogatories, or to make an affidavit, the same must be on oath. 

As where the Lord Stuart brought a bill against Sir Thomas Meers, to compel him to a specific performance of articles for the purchasing of Lord Stuart's estate, Sir Thomas in his defence intituled, that there were defects in Lord Stuart's title to the estate; and it being ordered that Lord Stuart should be examined on interrogatories touching his said title; it was objected, that Lord Stuart being a peer of the realm ought to answer upon honour only; but it was ruled by Lord Harcourt, that that privilege of peersage did allow a peer to put in his answer upon honour only, yet this was restrained to an answer; and Sir John Meers, or where a peer is examined as a witness, he must be upon oath; and that this examination upon interrogatories, being in a cause wherein his Lordship was plaintiff, to enforce the Execution of an agreement, as his lordship would have equity, to he should do upon oath, and allow the other side the benefit of a discovery, and that in a legal manner; and according ordered Lord Stuart to put in his examination on oath. 


It had been held, that though a court of equity will not proceed against a member that hath privilege of parliament, yet if a parliament man sues at law, and a bill is brought here to be relieve against that action, the court will make an order to stay the proceedings at law till the parlia-

ment shall order. 1 Vern. 329. 

R. T. being chefe a burges 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 sitting, or not fit till after the trial had. 

Rogm. 12. 1 Sid. 43. S. C. 

It hath been held, that in an action founded on the statute 12 & 13 H. 7. the defendant shall have an impeachment; and it was said in this case, that the practice is to file a bill in nature of a special capias against the defendant, and then to summon him; and it he appeare upon such summons, the plaintiff may declare against him, as in capias multis. 

Hill. 10 Geo. 1. 

B. R. Wadsworth v. Handibale. 

Peeis
Peers are intitled to a letter milli, which method was introduced upon a presupposition that peers would pay tax. If it were not so, the peer's name only was mentioned on that requisition that is due to the peerage. 1757. 167.

If the lord doth not appear upon the letter, a subpœna on motion is awarded against him; because no subse-
quient process can be awarded but upon a contempt to the
Great seal, and the Chancellor's letter is only ex gratia.

If on the motion of the subpœna, 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 per-
on cannot be imprisoned; but the proceedings must be by fequestration, unless, &c., &c. and this is regularly
made out, upon affidavit made of the service of the let-
ter and the subpœna, sometimes it is moved for without,
and it shall appear that the peer was served at the
day affigned to shew cause why the sequestration should
not issue; and this only, for a sequestration is never made
absolute without an affidavit of the service of the order
of shew cause, and a certificate of no cause shewn. 2
pet. causes (which has been put off on that account)
the very first causes in the paper when the court sits af-
fter privilege is out. 4 Bac. Abr. 238.

A sequestration was granted, unless caufe, against the
Lord Clifford for want of an answer; he afterwards put
in an answer, which being reported insufficient, it was
ordered to be set aside; and it appears, the plaintiff in
the petition being no answer; but the court thought it a hard-
ship in the case of a peer or member of the house of the
Commons, that a sequestration, which in some re-
exists is in nature of an execution, should be the first process
against them; and therefore allowed, that in case of an
answer being insufficient, the plaintiff shall be
move again de novo, for a sequestration. 2 P. Will.
385.

Lord Clifford's cafe.

It was moved for a sequestration, for want of an
answer, against a manent servient of a peer of the realm,
as the first process for contempt, in the same manner as
he who assists himself (as sometimes it is moved for) was
granted by the Master of the Rolls, yet the registor
refused to draw it up as thinking it against the course of
the court; which being moved again before the Lord
Chancellor, his Lordship, upon reading the statute, 4
vol. ii. no. 117.

w. 3. likewise granted the motion, it appearing to be
both within the meaning and words of the statute; and
inasmuch as it were the first process, the attachment
would lie against their persons, consequently the bill
and remedy against them, and they would have a greater
privilege than their lord, if the process against such menial
servant were to be a subpœna. 1 P. Will. 335.

For more learning on this subject, see 17 Vin. Abr.
and 4 Bac. Abr. tit. Privilege.

Privilege of ambassadours. See Ambassadors,
Privyjeet places, Persons referring to pretended pri-
ileged places may be arrested, 8 & 9 W. 3. c. 27. fett.
15. 9 G. 4. c. 21. 12.

Privyty, (Privyty,) Privy familiarity, friendship,

inward relation: If there be lord and tenant, and the
tenant holds of the lord by certain services, there is a pri-

vity between them in respect of the tenure. Cowell, ed.
1726.

There are three sorts of privileges, viz. privilege in
estate, in blood and in law. Privies in blood are
based on the consideration of the defeated of
privies in blood inheritable, and this is in three
manner, viz. inheritable as general heir, or as special
heir, or as general and special heir. Privies in estate are
as joint tenants, baron and feeme, donor and donee, lef-
see and lellee, the possession of the privileges in law
are, when the law with

out blood or privilege of estate makes its entry lawful, as lord by echeat, lord that
enters for mortmain, lord of villan, &c. 8 Rep. 42. b.
Hill 45 Eliz. Whittingham's cafe. S. C. cited per James
J. fo. 32. in the cafe of Gasly v. Wade.

There are three other sorts of privileges, viz. in respect
of estate only, contract only, estate and contract to-
gether. Privy of estate is, as if the lessor grants over his
reversion, (or if the reversion echeat.) Now between
the grantee (or the lord by echeat) and the lellee, there
is privilege in estate only. So between the lellee and af-

nec of lel see for no contract was made between them.
Privy of contract is personal privilege, and ex-
dends only to the person of the lessor, and is the privilege
of the lel see as in the principal cafe when the
lel see al-

igned over his interest, notwithstanding his affidavit
the privilege of the contract remained between them, tho'
privy of the estate be removed by the act of the lel see himself;
and the reason of this is, the lel see himself shall not prevent by his own acts such remedy
which the lel see had against him by his own contract,
but when the lel see granted over his reversion, there,
against his own grant, he cannot have remedy; because
he has granted the reversion to the other, to which the
rent is incident. 2dly. The lel see may grant the term
for a poor man, he shall not be able to maintain the
land, and who will by indigence, or for malice, permit
it to lie free, and then the lel see shall be without remedy,
either by diffrest, or by action of debt, which shall
be inconvenience, and will concern in effect every man,
(because for the most part every man is a lel see, or a
lel lee,) and for these two reasons all the cafes of enter-
ty, tort, eviction, suspension and apportionment of the
rent are answer'd; for in such cafes it is either the act
of the lel see himself, or the act of a stranger, and in
none of the said cafes, the folc act of the lel see himself
shall prevent the lel see of his remedy, and will introduce
the privy of estate and contract and efa te together, is between the lel see and lel lee him-

Priibly, (derived from the French privile, familiaritii) Signifies him that is partake, or hath an interest in any
action or thing; as privities of blood, Old Nat. Rev. 17.
and they are linked in usage of antiquity; every man,
in that tall is pri by to sider the latter. 1 Sol. 
417. No privilege was between me and the tenant.
Littleton, fol. 106. If I deliver goods to a man, to be
carried to such a place, and he, after he hath brought
them thither, doth real them, 'tis felony; because the
privy of delivery doth exist as soon as they are
brought there. Starling, P.C. Cas. 12. 25.

25. Merchants pri bly are opposite to merchant strangers, 2 Ed. 3. 9 & 14. The author of the New Terms of
the Law makes divers forts of pri bly, viz. pri bly in efa te,
7
then

Privies in deed, privies in law, privies in right, and privies in blood. See Perkins 831, 832, 833, and Geo. l. 3. fol. 23. Walker's cafe, and lib. 4. fol. 123, 124, mentions four kinds of privies, viz. Privies in deed, as the heir, Privies in law, as executor or administrators to the deceased; privies in estate, as he in the se封uren, 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 privy in tenure, as the lord by eftate, that is, when the land eftate is to the lord for want of heirs. Gough, edit. 1727.

Privies inheritable, as heir general, shall take benefit of the infancy, as if infant tenant in fee-simple makes feftinent, and dies, his heir shall enter. The fame law of him that is heir general and special, and also of him that is heir special, and not general. But privies in estate (unless in some special cafe) shall not take advantage of the infancy of the other. 8 R.ip. 42. b. 43. Westminster's cafe.

A surrender by an idell of an estate for life to defroy a contingent remainder is void ab initio, and therefore any person may take advantage of it, as well privy in eftate as heir at law. But a feftinent and lively made proprius manibus of the idell, not being merely void, makes a difference. Card. 436. Hill. v. H. 3. B. R. Thompson v. Leech.

Privy Council. (Concilium Regii. Privatum Concilium) is most honourable assembly of the King and Privy Councillors in the King's court or palace, for matters of state. 4 H. 6. 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 inquire by twelve discreet peroes of the cheque roll of the King's household, if any servant sworns, and his name put into the cheque roll under the flare of a lord, make any confederacies, compelling, conspiracies or imaginations, with any peroes, to defroy or murder the King, or any lord of this realm, or any other peroes sworn to the King's Council, Steward, Treasurer or Controller of the King's house; and if it be found before the flare flewad by the said twelve men, that any of the King's servants have confederated, &c. as above, he shall be put to anfwer. 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 twelve men of the King's household, and such midlers shall have no challenge, but for malice; and if such mifiders be found guilty by coufion or otherwise, the offence shall be judged felony.

Stat. 9 Ann. cap. 16. fett. 1. If any peroes shall unlawfully attempt to kill, or shall unlawfully affault, and shall wound any one of the most honourable Privy Council, when in the execution of his office of a Privy Councillor in, or in any Committee of Council, the peroes so offending being convicted shall be felons, and suffer death without benefit of clergy. See 1 Hawk. P. C. c. 17. fet. 25. c. 18. fet. 8. 2 Hawk. P. C. c. 16. fet. 4. c. 16. fet. 12. 2 Hawk. P. C. c. 25. fet. 16. fett. 15. 1 Privy Seal (a. Privatum sigillum.) Is a seal that the King wifh to such grants, or other things, as pafs the Great seal: First they pass the Privy fignet; then the Privy seal; and lastly, the Great seal of England. The Privy seal is fometines used in things of less confequenee, that never pafs the Great seal. No writs shall pass under the Privy fignet, which rouenue roll under the Common law. 2 H. 6. f. 555. See Clerk of the Privy seal, Clerk of the Stent, Seal.

Wisson, Was the name of the seal of King Arthur, on which the Virgin Mary was painted. 'Tis mentioned in Geoffrey of Monmouth. 1. 7. c. 2.

Mus. Goods may be imported and exported out of the plantation, in prize ships, 7 & S. 3. c. 22. f. 3.

Prize ships to be registered, and oath made that the property is English, 7 & S. 3. c. 22. f. 19.

The property of prizes in the captors, and the prizes to be appraised, sold 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.

Duties for condemning prize ships in America, 6 Ann. c. 37.

Duties for condemning prize ships in America, 6 Ann. c. 37. f. 8.

Duties for condemning prize ships in America, 6 Ann. c. 37. f. 8.

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Directions for registering letters of attorney, 33 Geo. 2. c. 19. f. 6.

Penalties applied in part to Greenwich Hospital, 33 Geo. 2. c. 19. f. 7.

The provisions of 30 Geo. 2. c. 18. extended to Spanish prize goods, 3 Geo. 3. c. 25.

Probate is a preludial privilege, or in respect of a thief taking a thief, &c. And in law, pre in the grant of an annuity pro confessis, flowing the cause of the grant, amounts to a condition: But in a seisin, or lease for life, &c. it is the consideration, and doth not amount to a condition; and the reason of the difference is, because the estate of the land by the seisin is executed, and the grant of the annuity is executory. Plutus, 412, 413, Law's Inst, 231.

Probate, in the laws of Cumnatius, c. 44. apud Brummanum signifies, to claim a thing as his own.

Probate of Ecclesiastics, (Probatio Tekstamentum) In the exhibiting and proving wills and testaments before the Ecclesiastical judge, delegated by the bishop, who is ordinary of the place where the party dies. And the ordinary is known by the quantity of the goods that the deceased had out of the diocese wherein he departed; for if all his goods be in the same diocese, then the bishop of the diocese, or the archdeacon (according to their composition into four or five parts of the whole) doth the good part; but if the goods be disposed in divers dioceses, so that there be any form of note (as five pounds ordinarily) out of the diocese where the party lived; then is the archbishop of Canterbury (or York) the ordinary, by his prerogative. This Probate may be made in two forts, in common, or per testes. The proof in common form is only by the oath of the executor, or party exhibiting the will, who sweareth upon his belief, that the will exhibited by him, is the last will and testament of the deceased. The proof per testes is, when over and besides his own with he also produces witneffes, or makes other proof to the judge, and that in the preference of both may pretend any interest in the goods of the deceased, or t least in their absence, after they have been lawfully immoned, to see such a will proved, if they think good. And the latter course is not to be often commonly, when here is fear of frite, or dispute about the deceased's goods. For some hold that a will proved in common form, may be called in question any time within thirty ears. And where a will dispose of lands and tenements f freehold, it is now frequently proved by witnesses in Chancery. Cowell, edit. 1727.

Probate of wills, to be taken without extortion, 31 Hen. 3. cap. 19. 46 Edw. 3. 3 Hen. 5. c. 2. 6.

The fees to be taken for Probate, as at 46 Edw. 3. 3 Hen. 5. c. 2. 6.

The archbishop of Canterbury may call perons out of the diocese where they dwell, to prove a will, 23 Hen. 8. c. 9. sect. 5. For other matters, see Admiralty, Ecclesiastics, Will.

Probatory, An accuser, or approver, or one who undertakes to prove a crime charged upon another. The word was firstly meant of an accomplice in felony, who to save himself confessed the faid, and accused any other principal, or accessory, against whom he was bound to make good the charge by duel, or trial by the country, and then was pardoned life and members, but yet to fulfume the service of the king, either by a false confession, tenetor et conventici, libellus ut visam habeat & memora. Sed in regno remunera non debet, etiam velis plebis imm. Bracton. Vid. Plata, lib. 2. cap. 52. sect. 47. 48.

Probation, is a writ which lies where an action lies out of an Inferior court, to a Superior court, as the Chancery, King's Bench, or Common Pleas, by Habeas corpus, Certiorari, or writ of privilege; to fend down the cause to the court from whence removed, to proceed upon it, it not appearing to the higher court that the supplication is sufficiently proved. P. N. 1835 5 Edw. 2. cap. 23. sect. 6. For when a writ of Habeas corpus, or Certiorari, doth not put in good bail in time, (where good bail is required) then here goes this writ to the Inferior court to proceed Non juante the Habeas corpus, &c. 2 Lif. Abr. 576. If a

Certiorari or Habeas corpus, to remove a cause, he returned before a judge, the judge will give a rule thereupon to put in good bail but the same day, or not, shall be a judgment bydefault, upon serving his attorney with a copy of the rule, if he doth not, then the judge will sign a warrant for a Proceed- dende, to remove the cause back again where the action was first laid: Alfo if bail be put in at the time, and do not prove good, the judge will grant a rule for better bail to be put in by such a day, or the defendant already put in; if which the defendant doth not do, the judge will then likewise grant a warrant for a Proceed- dende. 2 Lif. 377. See Certiorari.

Probation ad Jutitium, Lies when the judges of any court delay the party, plaintiff or defendant, and will not give judgment, so as a cause is not sought to be done. Woods' left. 570. If verdicts pass for the plaintiff, in a suit of Novel dissein before the justices of aliime, and before they give judgment, by a new commissio, new juries are made; the plaintiff in the affile may for that Certiorari directed to the other judges to remove the record before the new juries; and another writ to the new jus- tices to receive and inspect the record, and then proceed to judgment, &c. New Nat. Brev. 361. where the au- thority of commissiornors of Oyer and Termiue, &c. is pursued by writ of Superedes; their power may be re- moved by a writ of Proceeds. Regist. 124. 12 Aff. 21. H. P. C. S. 19. 1720.

Probation on an aid paper. If a man pray in aid of the King, in a real action, and the aid be granted; it shall be awarded that he sue to the King in the Chance- ry, and the justices in the Common Pleas shall stay until the first of procendendi de liquela come unto them: And if it appear to the judges by pleading, or the hearing of the party, that the King hath interest in the land, shall of lute rent or service, &c. there the court ought to stay un- til they have from the King a procedendo in liquela: And then they may proceed in the plea, until they come to give judgment; when the justices ought not to proceed to judgment, for want of aid. New Nat. Brev. 352. So in a personal action. If the King doth not pray in aid of the King, the judges are not to proceed until they receive a procedendo in liquela. And though they may then proceed and try the issue joined, they shall not give judgment until a writ come to them to proceed to judgment. Ibid. See 18 Fin. 40, 280.

Proceeds, (Procesiis, a procedendo ad initium aegit ad finem) Is the manner of proceeding in every cause, being the writs and proceeds that go forth upon the original upon every action, being either original or judicial. Britton, fol. 136, wherein there is great diversity, as you may fee in the tables of Procesiis, and Procese, and Proceso. Sometimes that only is called the Procesiis wherein the party is called into the court, because it is the beginning or principal part thereof, by which the rest of the business is directed. Divers kinds of Proceeds upon indentments, see in Gomp. Juf. of Peace, fol. 133. 134. 135. and Lamb, in his treatise of procesiis, annexed to his Eirem- eche. Special proceeds is that which is especially appointed for the offence by statute, for which he refers his reader to the eighth chapter of his fourth book. The difference between procesiis and precept, or warrant of the jus- tices is, this, The precept or warrant is only to attach and convene the party before any inducment or conviction, and may be made either in the name of the King, or in the name of the justice. But the procesiis is always in the King's name, and usually after an indentment. Co. 8 Rep. Blackstone's cafe. See Oultimacy, and 17 Vin. Air. tit. Procesiis.

Proclamation. In cathedral and convenional churches, the members, and their flated proccfssi, wherein they walked two or three times, in their vestments or capes, with hymns, music, and other suitable exprefions of solemnity and respect to the occasion. In every parish there was a customary proclamation of the parish priest, the patron of the church, with the chief flag, or holy banner, and the other parchmenters in Atonement week, to take a circuit route through the town, for monies, and pray for a blessing on the fruits of the earth. To this we owe our present custom of Perambulation, which is still most places called proccfssoning, and going in proclfaation, though
we have left the order, and almost the devotion, as well as the pomp and superflition of it. Cowl. edit. 1727.

PROCLAMATION UNANIMOUS, Is a writ for the continuance of a procla., after the death of the Chief justice, or other justices in the writ of Oyer and Terminer. Regist. Oriol. fol. 125 B.

Gyelin amy, (Proximus amicus, vel propriogenius, the next friend) Is used in the Common law for him that is next of kin to a child in his maleage, and is in that respect allowed by law to deal for him in the managing his affairs, as to his guardian, if he hold any land in fee, and is allowed by any wrong done to him. Stat. 2 Wilm. cap. 43, and Wilm. 2. cap. 15, and is in the prosecution of any action at law per guberniam, where the plaintiff is an infant; & per proximus amicus, where the infant is defendant. See Co. 2 hyft. fol. 261. See Infant.

Proclamation, (Proclamation) Is a notice publicly, 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 offences, to ratify and confirm an ancient law, or as fas be the books expects it, great terest, at any time, to be done by the laws of his displeasure; and such proclamations being grounded on the laws of the realm are of great force. Fortes. de Laud. cap. 9. 12 Co. 74, 75. 11 Co. 87. Dalf. 20. pl. 10. 2 Rol. Abr. 209. 3 hyft. 162.

It is likewise clear, that the subject is bound to obey all proclamation legally made, tho' that the thing prohibited were an offence before, yet that proclamation is a circumstance which highly aggravates it; and upon which alone the party disobeying may be punished. 12 Co. 74. Hyft. 251.

It is clearly agreed, that no private person can make an 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. Brs. Proclamat. pl. 1. 12 Co. 75. Cmbr. 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 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. 5.

On this foundation hath been the manner 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 hyft. 63.

So where an act was made by which foreigners were licensed to mercantize within London; and H. 4, by proclamation prohibited the execution of it, and ordered that it should be in full force usque ad primum parliamentum; 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 B. on the question was, Whether the King by proclamation might prohibit new buildings in and about London, 2ndly, If the King might prohibit the making of flour 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.

But notwithstanding the above-mentioned opinion, there are instances of persons who have been sentenced in theftar-chamber upon proclamations against the increase of buildings; and particularly in Hyft. where a perfon was fined in theestar-chamber for building without brick, though upon an old foundation; and it is there said, that such buildings had an ill effect upon the use of fire, consumption of timber, and difficulty of feeding, cleaning and governing the city; and it was said in general, that proclamations were so far just as they were made pro bono publice, and for publick utility. Hyft. 251. Arne-

The King by proclamation may call or discharge parlia-

ments, declare war or peace; for these are preroga-
tive 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 show that such war was proclaimed. 3 hyft. 162. 1 Hal. Litt. P. C. 163. Owen 45. Rol. Ens. 605.

The King by proclamation may legislate, make and reign coin, and make it current money of this kingdom, according to the value imposed by such proclamation; he may designate base coin, or mix 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, purporting to be made under the Great seal, is neces-

The King by proclamation may appoint fals and days of thanksgiving and humiliation; and ifue proclamations for preventing and punishing immorality and proflam-

nates; and join in the reading the same in churches and chapels. C. Litt. 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 if such proclamation was made, it shall be intended to have been duly made. Crs. Car. 180. Kely v. Manning, and see 1 Rol. Rep. 172.

PROCLAMATION OF A FLUE, Is a notice openly and formally given at all the affay held in the county, within one year after the enrolling it. And these proclamations are made upon transcripts of the fine, sent by the justice of the Common Pleas to the justices of affay, and justices of peace. Hyft. Symb. 2 par. tit. Fines, sect. 132. See Fine.

Proclamation of rebellion, Is a publick notice given by the officer, that a man not appearing upon a jofepana nor an attachment in the Chancery, shall be required to render himself by a day assigned in this writ. Cowl. edit. 1727. See Commission in rebellion.

PRO CONSOFFA, Is when a bill is exhibited in the Chancery, to the defendant, which appears, and is in contemplation for not answering; or might have been filed in the bill shall be taken as it is when conselled by the defendant. Termes de la la; 494.

Where the defendant has not appeared, Chancery can't decer the bill pro consella, but ordered a seetuation against his real and personal effects, till he cleansed the contempt. 2 Ch. 258, 32 Cat. 2. Notas v. Battle.

The course of the court now is to take a bill pro con-

sella after the party has once appeared, and stands out in contemplation 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 cases putting the plaintiff to prove the subsistence of his bill. Arg. Ven. 224. Hill. 1683. in the case of 5fobon v. Definimier.

Two defendants, the one having answered, the other not refused, he shall be bound by the other's answer, if he clean pass against them. Tach. 74, cites 7 Jar. Mar.

Defendant being a prisoner in the King's Bench re-

fused to answer. The bill can't be taken pro consella, unlefs he was in the prison of this court; whereupon he was removed by habeas corpus into the Exchequer, and had a day given him to answer. And he still refused, the bill pro consella, and he was ordered to be kept clofe prisoner. N. Ch. R. 50. 1653. Thomas v. Jones.

Where the defendants were not brought in upon an

process of contempt, but they appeared to the pulpano to

answer, and craved a further day, and had it, and all

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good out all contempt, and could not be taken, the bill was taken pro confis; and a decree upon it decreed to be good and grounded, and a bill of review ordered to be filed.


In a suit for tithes the defendant was in contempt for not answering, and was brought by several orders to the suit, and being a quaker, refused to answer on oath, but prayed to answer without oath. Finch C., admonished him of the evil, viz. that the bill must be taken pro confis. In saying this, before the Lord Chancellor pronounced the decree, though Sir J. Clerk-Murray, as amicus curiae, said, that this abuse for tithes, especially small tithes, was not proper for this court, and had not been used; but decreed for him, and referred the valuation to the Master. The defendant was to answer, but did not appear.

The defendant having appeared, and afterwards filed in contempt till fequestration was returned; it was insisted, that the bill ought to be taken pro confis; but the Lord Keeper said, He would confider of it till the next term. And it being alleged, that a baron and afe were defendants, and that it was the wife only who had appeared, and that without the husband's privy, Lord Keeper referred it to a Master to examine the facts, 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 fequestration to bring in him. Thurs. 247. Trin. 684. Giffen v. Strangeways.

The defendant was to answer, and standing out all contempt till an order was made for a fequestration; it was prayed by the plaintiff's counsel, that the bill might be taken pro confis. To which it was objected by the counsel on the other side, that this could not be done, because the fequestration was not under seal nor executed, and also because the defendant did not produce the original itself, but only a copy of it. Lord Chancellor Parker held the last objection certainly a good one, but as or the other, there seemed to him to be no reason for it; for putting the seal to the fequestration, and actually executing it, seems to be then only necessary when he plaintiff is not ripe for a decree upon his own bill, and wants some discovery from the defendant's answer, upon which the decree may be founded; and therefore he actual executing a fequestration to extort an answer, of which the plaintiff has no occasion, seemed to him very unnecessary. 10 Mad. 431. Poclb. 5 Gres. Advoc.

Stat. 5 Geo. 3. cap. 25. enacts, In like case, that equity shall not state prochall if it be not his own, that it wants some discovery from the defendant's answer, upon which the decree may be founded; and therefore he actual executing a fequestration to extort an answer, of which the plaintiff has no occasion, seemed to him very unnecessary. 10 Mad. 431. Poclb. 5 Gres. Advoc.

If the defendant obstinately insists upon his demurrer, and refuses to answer, the court when the party is of opinion. But sufficient matter is alleged in the bill to oblige him to answer, and for the court to proceed upon, the court will decree the matter of the plaintiff's bill; for by the demurrer are confessed all matters of fact that are alleged. Corf. Canc. 229.

Planta, (Planta). Is he who undertakes to manage another man's estate, in any court of the Civil law or Ecclesiastical, for his fee. Qui aliena gestia gerens sibi jure.

Procumites, Were those who were called Juicres in 1375, or Fudicierii errantes, in England. Cewell. edit. 1727.

Plots of the clergy, (Procumites clericorum.) Are those who are chosen and appointed, to appear for the cathedral, or other collegiate churches, as also for the common clergy of every diocese at the parliament, to sit in the lower house of Convocation; and this is the manner of their election. First, The King directs his writ to the archbishop of each province, for the summoning of all bishops, deans, archdeacons, cathedral and collegiate churches, and generally of all the clergy of his province, aligning them the time and place in the said writ: Then the archbishops proceed according to custom: One example shall serve for both. The archbishop of Canterbury, upon his writ received, directed his letters to the bishop of London, as his dean provincial: First, citing himself precomptently, and then willing him to cite in like manner, all the bishops, deans, archdeacons, cathedral and collegiate churches, and generally all the clergy of his province to the place, and align the day prefixed in the writ; but directeth within, that one Pretor be

Vol. II. No. 175.
P R O
P R O

fect 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, giving them in like manner and form to 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 so appearing, and performing so far to present them, in a schedule annexed to their letter certificatory. The bishops proceeded accordingly, and the cathedral and collegiate churches, and also the clergy make choice of their proctors, which done and certificated to the bishop, he returned them 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 Petition, Convocation, and 4 instl. fol. 4.

Procurations (Procurations) Are certain sums of money which parish-prebends pay to the bishop or archdeacon, ratewise manifestation. They were annually paid in necessaries for the visitor and other clusters; but 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 Missalvica, 2 tom. pag. 165, is very particular, wherein that pope tells us, that complaint had been made to him that the archdeacon or bishop were burdened with a certain number of horses, and three or more hawks, and did so grievously oppress a religious house with that vatt equipage, that he caused the monks to spend in an hour as much as would have maintained them all a year. Cowell, edit. 1727. See 17 Fin. Abr. 456.

Proctor, 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 Bifמחs, cp. 47, we read of a procurator Regis. So procurator reipublicae is a public magistrate. There are also procuratores clerici sent to the convocation; and the bishops sometimes are called procuratores ecclesiastorum. And from this word prætor the word prætor in the Civil court. It is also used for him that gathers the fruit of a benefice for another man. Stat. 3 Ric. 2, plag. 1. cap. 3. and procurator for the writing or inquiring into what he is authorized. Procuratores are at this day in the west parts called proctors.

Procuratores ecclesiæ parochialis, The churchwardens that were to act as proxies and representatives of the church, for the true honour and interest of it. Parish. Antiq. 302.

Procuratorium, The procurator, or instrument by which any person or community did constitute or delegate their proctor or proctors, to represent them in any judicial court or cause.

Procurator monastici, The advocate of a religious house, who was to solicit the interest, and plead the causes of the society. See Phystbes monastici.


Prebend, Is a title often given in our old books, to the burons or other military tenants, who were called to the king's council, and was no more than dignitas & feuda bona, discreet legen men, who, according to the prætor, were to serve and know their master's pleasure, to give their counsel and advice. Cowell, edit. 1727.

Prebendary, A word necessary to inducements of treason. 2 How. P. C. 224.

Proclamation (Quo proclamat a fuisse) Is a disrespected paid to the name of God, and to things and persons consecrated to the holy Church. And profanemef is punishable by divers forfeitures; as the taking and receiving of the Sacrament of the Lord's Supper, profanely using the name of God in plays, & profaning the Lord's day, cursing and swearing. &c. 1 Ed. 6. c. 1. 1 Eff. c. 1. 3 Eff. 1.

Probity, A word necessary to inducements of treason. 2 How. P. C. 224.

Preface or (La bula precat a fuisse) Is a disrespected paid to the name of God, and to things and persons consecrated to the holy Church. And profanemef is punishable by divers forfeitures; as the taking and receiving of the Sacrament of the Lord's Supper, profanely using the name of God in plays, & profaning the Lord's day, cursing and swearing. &c. 1 Ed. 6. c. 1. 1 Eff. c. 1. 3 Eff. 1.

Probity, A word necessary to inducements of treason. 2 How. P. C. 224.

Profer (Profer, vel proferam, from the French profer, or procurer) Is the time appointed for the appearance of the said prebendaries and other officers in the Exchequer, which is twice in the year. See 2 & 3 Eliz. cap. 2, which may be gathered also out of the Register, fol. 119. This writ De attuative vizcruitis pro proo faciendo. We read also of probets in fl. 2 & 3. c. 21, in which place profer signifies the offer or endeavour to proceed in an action by any man concerned so to do. Cowell, edit. 1727. As to the proper or orderly place of the sheriff of the county, we know not whether the sheriff of the county of the justiciary of the sheriff of the manor of the sheriff of the county not be known before the finning of his accounts; yet it seems there was anciently an estime made of what his conflatant charge of the annual revenue amounted to, according to a medium, which was paid into the Exchequer at the return of the writ of summons of the pries; and the sums to profit the king and are to this day called profer vizcruitis. But although these probers are paid, if upon the conclusion of the sheriffs accounts, and after the allowance and discharges had by him, it appears that there is a surplusage, or that he is charged with more than he could receive, he hath his probers paid or allowed to him again. Holb. Star. Accts. 236.

Proser vicerectitis. See Profer.

Proser in curia, Is where the plaintiff declares upon a deed, or the defendant pleads a deed, he must do it with a proser in curia, to the end that the other party may at his own charges have a copy of it; and until he search out who has the like title with him, and when he finds the like title, and that his own proser is defective, he is not bound to answer it. 2 Lif. Abr. 582.

And if a man pleads by virtue of an indenture, which is lost, on affidavits made here, the court will compel the plaintiff to file the counterpart, and the defendant may plead thereon; or will grant an imprimatur. See proser in curia. But if he be party or priy in eflate or interloc, or who judges in the right of him who is party or privy, pleads a deed; notwithstanding the party priy claims a part of the original estate, yet he must file the original deed. 10 Rep. 92, 93. But where a man is stranger to a deed, and claims nothing in it, &c. there may be plead the patent or deed, without a proser in curia. A man may claim under a deed of usufr, without having it; because the deed doth not belong to him, though he claims by it, but the covenantor's, and he hath no means to obtain it; and for that it is an effect executed by the statute of usfrs, or it is a party by law, like unto tenant in dower, or by statute, &c. who may with the like title or title exterior, and need not file the deed. Cro. Car. 424. And in actions executed by certain statutes, or by the statutes determined, there need not be any proser in curia. 3 Lev. 204. Also an affiance of commissioners of bankrupts need not file the bond to the bankrupt, because he comes in by act of law, &c. Cro. Car. 209. By fixture, so advantage or exceptions shall be taken for want of a proser in curia, but the court shall give judgment according to the very right of the cause, without regarding any such omission and defect, except the same be specially and particularly set down, and sworn for cause of demurrer. See 4 & 5 Anon. cap. 16.

Presbytery (Presbytery) Is used particularly for the ceremony of the great officer immediately over the clergy, by which a monk presides himself to God by a vow of three things, viz. Obedience, chastity and poverty, which he promised constantly to observe. And this was called, sancta regiwm presbyterii, and the monk a religious presbyter. Cowell, edit. 1727. See 17 Fin. Abr. 545.

Presbytery. If this be true in London, Not to be prejudged by 10 & 15 Car. 2. As to the prebend of Skipston. 13 & 14 Car. 2. c. 4.

Presbytery. A devise of the profits of lands, is a devise of the land itself. Dyer 210. A husband devised the profits of his lands to his wife, until his son came of age; this was held to be a devise of the lands until that time. And further it is held, that if the husband chose that his mother should take the profits of it until his son came of age, &c. this would give the mother only an authority, and not an interest. 2 Lev. 211. By devise of
as the jurisdiction of the court of C. B. is founded on original writs issuing out of Cha cery, it hath been heretofore doubted, whether the court could without writ or plea depending award a prohibition; but this point has been determined by the unanimous sense of all the judges, viz. that this court may upon a suggestion grant prohibitions, to keep as well temporal as ecclesiastical courts within their bounds and jurisdictions, and that with ple depending the Common law being, in these cases, a self-existing and, I flanding instead of an original. Bro. Prohibition, pl. 6. No. 153. 12 C. B. 58, 108. Bro. Confutation, pl. 3. 4 Inf. 59. 2 Brevard. 17.

Accordingly it hath been adjudged, That a prohibition ought to be granted by the court of C. B. to the king's superior courts of delegates for suing there to avoid an infraction of a clerk to a church in Lancashire, after induction made him thereto, though the grievance for this church could not be brought in C. B. but in the county of Lancashire; because the title of the advowson was not annually confirmed by this prohibition, but the injunction upon the Common law, of which this court has special jurisdiction.

Moor. 861. 2 Rel. abr. 317. Hatton's case. Hic. 15. S. C.

But as to the courts of B. R. and C. B., this difference hath been made. That in the first of those courts a prohibition may be awarded upon a bare surmise, without any suggestion on record; and such surmise is only in matter of a jurisdiction or a prohibition, as is discontined by the deme of the King; but that as to a prohibition issuing out of C. B. the suggestion must be on record, and therefore is considered as the suit of the party, and in which he may be refused, and is not discontinued by the deme of the King. N. 77. Dixy v. Brown. Palm. 472. Latch 74. S. C.

If the King's farmer, or copyholder of the King's manor, be sued in the ecclesiastical court for tithes, upon a suggestion in the court of Exchequer that he prescribes to pay a certain modus in lieu of tithes, he shall have a prohibition out of the said court, and such modus shall be tried there. Palm. 525. Lane 39. 1 Rel. abr. 539.

The grand feccion of North Wales may send a prohibition, and write to the spiritual courts there, as well as the courts here may. 1 Stid. 92. but for this see C. Car. 344. 1 f. 330. Vaugb 411.

It is laid that though a surmise is a matter of fact, and triable by a jury, yet it is in the discretion of the court to deny a prohibition when it appears to them that the surmise is not true. Hic. 67. in the case of Ashton parish v. Caffie Birming Chapel. This authority has been often quoted in questions of this kind, and in some cases denied to be law; but yet it seems the better sense of the opinion, and to have been held by the greater number of our judges, That the awarding a prohibition is a matter of discretion, that is, That from the circumstances of the case, the superior courts are at liberty to exercise a legal discretion therein, but not an arbitrary rule in refusing prohibitions, where in such cases they have been granted, or where by the laws and statutes of the realm they ought to be granted. Winc 78.

It hath been determined in the house of Lords, That no writ of error will lie upon the refusal of a prohibition; but when a prohibition is awarded, it is with an idea of continuance, and the court docs not grant it without error. 1 Lord R. 454. in the Bishop of St. David's case.

If the matter of a ship fines in the Admiralty for his wages, and a prohibition is moved for, upon a suggestion that the contract was made on land, and the court is of opinion

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the lands usually pays; unless there are other words to show the intention of the testator. \textit{Moor. 538, 728.}

\textit{Programma}, A letter sealed with the King's seal. Spec. Sax, lib. 3 art. 34.

\textit{Prohibition} (Prohibent). Is a writ to forbid any court, either spiritual or secular, to proceed in any cause thereunto not belonging. The discretion thereof belongs not to the same court. F. N. B. fol. 39. But it is now most usually taken for that writ which lies for one that is impeached in the court of chancery, for a cause belonging to the temporal jurisdiction, or the continuance of the King's court, whereby as the party and his counsel, as the judge himself, and the registrar are forbidden to proceed any further in that cause. Coencli. As all external jurisdiction, whether ecclesiastical or civil, is derived from the crown, and the administration of justice is committed to various courts of history; hence it hath been the care of the crown, that these courts be kept within the limits and bounds of their several jurisdictions preferred them by the laws and statutes of the realm; and for this purpose the writ of prohibition was framed; which issues out of the superior court of Common law to restrain inferior courts, whether such courts be temporal, ecclesiastical, maritime, military, &c. upon a suggestion that the jurisdiction of a court is not within the powers of such courts; and in case they exceed their jurisdiction, the officer who executes the sentence, and in some cases the judge that gives it, are in such superior courts punishable, sometimes at the suit of the King, sometimes at the suit of the party, sometimes at the suit of both, according to the variety of the case. 2 Inf. 605. F. N. B. 12 C. B. 6. 1 Ad. 279. 2 f. 213. Sm. 628.

The reason of prohibitions in general is, that they preserve the right of the King's crown and courts, and the ease and quiet of the subject; that it is the will and policy of the law, to suppoke both bell preserved when every thing runs in its right channel, according to the original jurisdiction of every court; that by the same reason that one might be allowed to intervene, another might, which could produce nothing but confusion and disorder in the administration of justice. \textit{Shaw, Par. Co. 63.}

So that prohibitions do not import that the ecclesiastical or other inferior temporal courts are also than the King's courts, but signify that the cause is drawn ad auliam xenan than it ought to be; and therefore it is always laid in all prohibitions (be the court ecclesiastical or temporal to which it is awarded) that the cause is drawn ad auliam xenam contra eunonm & signumtem Regiam. 2 Inf. 502. 1 Rel. Rep. 252. 3 Bluf. 122. Palm. 297.

1. \textit{What courts may grant a prohibition, and whether the granting it is discretionary, or ex debo jutice.}

2. \textit{Who have a right to, and may demand, and join in a prohibition.}

3. \textit{Of the suggestion for, and manner of obtaining a prohibition.}

4. \textit{At what time a prohibition is to be granted; and in what cases it may be granted to inferior temporal courts.}

5. \textit{In what cases prohibitions are to be granted to the spiritual courts.}

1. \textit{What courts may grant a prohibition, and whether the granting it is discretionary, or ex debo jutice.}

The superior courts of 

Winchester, having a superintendency over all inferior courts, may in all cases of innovation, &c. award a prohibition; in this the power of the court of B. R. has never been doubted, being the superior Common law court in the kingdom. F. N. B. 53. 4 Inf. 71.

The court of Chancery may award a prohibition which may issue as well in vacation as in term time, but such writ is returnable into B. R. or C. B. Bro. Prohibition, pl. 6. 4 Inf. 81. 1 Peer Will. 43.

If one be sued 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 of Winst-

minster-Hall; or in regard this may happen in a vacation, when only the Chancery is open, he may move that court for a prohibition; but then it must appear by oath made, that the suit did arise out of the jurisdiction, and that the defendant tendered a foreign plea, which was not refused; then the determination has been made of Chancery impriose, and without these circumstances attending it, the court will grant a superedes thereto. 1 Peer Will. 476.
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. Sal. 32. 44. Car. 5. Com. 74. 1 Lord Raym. 576. S. C. Clay v. Smirl-
gage.

If there is judgment against a f omnif lent, who by the 
afflent 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 waife on the house or glebe, a 
prohibition to flay doing waife may be had by the pa-
tron, incumbent or any other perfon, because that is 
the King's writ; and any one may pray a prohibition 
for the King, and it is granted ex debitis jutification, and not 
honorary, and in the discretion of the court. Comp. In-
cumb. 43. 1 Sd. 65. 1 H. 247.

3. Of the fuggelle f in, and manner of obtaining a prohibi-
tion.

Where the matter fuggelle d for a probifion appears 
upon the face of the libel, an affidavit is never infitted 
upon; but if it does not appear upon the face of the 
libel, or if a prohibition is moved for, for more than ap-
sears upon the face of the libel, to be out of their jurif-
diction, there ought to be an affidavit of the truth of 
the fuggelion. 2 Sd. 549. Per his Ch. 1. 1 Perf. Hil's 477. 65. S. P. cited.

The fuggellel in the temporal courts may be traver-
fed. 2 Lev. 611. 2 Co. 44. Mor 525.

On a rule to flew caufe, why a prohibition fhould not 
be granted to flay a fuit against the plaintiff in the court 
where the fuggelle f in is, for not going to his affill 
church, or any other church, on Sundays or holi-
days, nor receiving the sacrament thrice a year, upon 
fuggellel of the statute of Eliza, and toleration act, 
and then qualifying himself within the act, and allging, 
that he pleaded it below, and they refused to receive his 
caufe; caufe was shown, that this fuit was falle, and 
that the plaintiff was not a diflinter, nor had qualIfied 
himfelf at fpera, and therefore hoped the court would not 
refufe the rule to fland unefs there was an affidavit of 
the fuit; for by that means any perfon might come and 
flugell a falle fuit, and out the spiritual court of their 
jurifdiclion, which the court admitted, and therefore 
for want of fuch affidavit the rule was difcharged. 1ld. 

If a plea to an inferior jurisdiction be properly tendered, 
which they refufe, this is to be a good caufe for a pro-
bifion, yet an affidavit must be made of the refufel. 
Stin. 20. Hard, 406. 3 Lev. 217.

In a fuit made for a prohition to the Eccle-
siastical court of London, for calling a woman whose 
affuie that the words were actionable there 
court, but the court would not grant 
fuggellel without oath made, that if any fuch words 
were spoken, it was in London, and not elsewhere. 4 
Abd. 356.

On a libel for calling the plaintiff old thief and old 
whore; the defendant fuggellel for a prohibition, that if 
any fuch words were spoken, they were spoken at 
the fame time; but this fuggellel was held falle, because 
the words ought to have been fully confeffed. 1 Vent. 10. 
Day v. Pius.

It was made an argument for a prohibition to the Eccle-
siastical court of London, for calling a woman whose 
after the party at any time hereafter, for any matter or caufe 
before rehearted, limited or appointed by this act to 
be fettled in the King's Eccleflial court, or before the Eccleflial judge, doe for any prohibi-
ion to any of the King's courts where prohibitions be-
fore this time have been used to be granted; that then 
the fuit of the party to whom the part of the fuit is, 
before any prohibition shall be granted to him or them, fhall bring and deliver to 
the hands of some of the juftices or judges of the fame 
court, such party demanded prohibition, the very 
true cop of the libel depending in the Eccleflial court 
concerning the matter where the party demanded 
prohibition, if facubcribed or marked with the hand of the fame 
party, and under the copy of the faid libel fhall be written 
the fuggellel, wherein the party to demandeth the 
prohibition; and in cafe the fuggellel, by two 
henefitl and fufficient witneffs at the leafe, be not proved 
true in the court where the faid prohibition fhall be gran-

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So if A. libel against B. and C. for defamation, and 
they fuggellel a prohibition, they fhall join in attachment 
upon it; and it is no objection to fay, that the defamation 
was feverall. 1 Id. Raym. 127. Per Trecy Ch. J. and 
fee for this 1 Vent. 266. Raym. 425. Carol. 448.

Where two or more are allowed to join in a prohibi-
tion against one of them diey, the writ fhall not absolution, 
because nothing is by them to be recovered, but they 
are only to be discharged. Owen 13. Per ex. a.

129.
ed and awarded, that then the party, that is let or hindered of his or their suit in the Ecclesiastical court by such prohibition, shall upon his or their request and suit, without delay, have a convalidation granted in the same cause in the court where the said prohibition was granted, and that the said double costs and damages against the party that so purfued the said prohibition; the said costs and damages to be ascribed or affixed by the court where the said convalidation shall be so granted; for which costs and damages the party to whom they shall be awarded may have an action of debt by bill, plaint or informa-
tion of the king's court to record. See 27 El. 8. c. 20. and 32 H. 8. c. 7, to which this act refers. In the construction of the above-mentioned statute the following opinions have been held.
That this statute referring to the statutes 27 & 32 H. 8. which extend to titles and offerings generally, all and any of the King's courts to record. See 27 El. 8. c. 20. and 32 H. 8. c. 7, to which this act refers.

21. & 22. Geo. I. ch. 60. Comp. Incumb. 600. Dyrr. 170. 6. And therefore it extends to prohibitions to suits of small titles as well as great. 1 Vto. 102. 2 Ed. Ryn. 117.

So it hath been adjudged, that the fuggestion of a mo-
dus dicamenti ought to be proved within six months, be-
ing within the act. 1 Vto. 104. L. P.

So where, one, that was sued for title of hay in the spiritual court, suggested for a prohibition, that he was to pay double costs and damages; and it was held, that this fuggestion ought to be proved, as well as one made of a modus dicamenti: So on a fuggestion upon the statute 31 H. 8. that lands are tife free, because the clause requiring the proof of a fuggestion is general, and not limited to real composition. 1 Rol. Rep. 55. Reynold v. Hay.

So upon a fuggestion, that the suits in the spiritual court was for tithes of heath and barren ground improved within seven years after the improvement, contrary to the statute; in this case the proof of the fuggestion within six months was held necessary. 1 Tyn. 231. Strande v. Hylmin. Cro. Ca. 208.

But it hath been held, that there needs no proof of the fuggestion where the suit is for tithes contrary to common right, or where the contract of the party is fuggested. Camb. 147.

It hath been held, that the fuggestion need not be proved irredeemably, nor with precise certainty as to all its circumstances, but that it be proved in the court of King's bench, or in such manner as to shew that the Ecclesiastical court has not jurisdiction, it is sufficient. Cro. East. 736. Mar. 911.

The fuggestion must be proved by honest and sufficient witneces, which is required by the express words of the statutes, and therefore the testimony of one attained of felony, excommunicated or convicted of recusancy, is, as in other cases, to be rejected. 2 Noll. 154.

But it hath been held, that perjuries, such as parochioners of the parish, &c. who may not be sufficient and able witneses at a trial at law, may notwithstanding be suf-
ficient witnesses to prove the fuggeftion; the chief intent of the statute being to prevent frivolous and vexatious fuggessions; also it hath been held, that after the admitting and recording the proof of the fuggestion, nothing is to be objected against the persons of the witneces or their evidence. Mchb. 27 Car. 2. in C. B. Sharp v. Hlay.

If a fuggestion consists of two parts, it is said to be sufficient to produce one witneces to the one, and another to another. 1 Vent. 107.

It hath been held, that the six months for proof of the fuggestion shall be accounted according to the calendar; and for this being a computation which concerns the intent of the statute, it is but reasonable that it should be done according to the computation used in the Ecclesiastical law. Hob. 197. Lit. Rep. 19. 2 Mcd. 58.

It is said in Mar. that the time of six months given by the statute to prove the fuggestion ought to be inten-
ded six months in term-time, and that the vacation Vol. II. No. 117.

4. At what time a prohibition is to be granted; and in what cases it may be granted in inferior temporal courts.

It is clearly agreed, that in all cases where it appears upon the face of the bill, that the admiralty, spiritual court, &c. have not a jurisdiction, a prohibition may be awarded, and is grantable as well after as before sentence; for the King's superior, and party in a superiority over another party, which needs no proof, there ought not to be double costs; for the mixing the contract with the manner of tithing privileges the whole. Brevett. 69. Tte. 149.

So where for a variance between the libel and fugges-
tion, a convalidation was awarded, and double costs adju-
dged 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. Tto. 79, 8o.

So where a prohibition was obtained upon a fuggestion which was not proved within the six months, in which the defendant took issue with the plaintiff, which was found for the plaintiff; and in this case it was refolved, 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 convalidation and double costs; but in this case he could not have a convalidation, the matter and issue being found against him; but ought to have prayed a convalidation upon the fuggestion's not being proved, and then should have had his double costs. Latch. 140.

Waxtton v. Sir G. Pacy.

The fuggestion or fuggession may be brought in by at-
tors and need not be in proper person. 1 Leon. 296.

A prohibition is not to be granted the last day of term, but on motion a rule may be obtained to stay pro-
ceedings till the enjoining term. Lath. 7. 2 Rol. Rep. 456.

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 bad and inconvenient to grant a prohibition. See the authorities supra, and Gof. Ca. 254. Lath. 154. Vent. 61. 6 Mcd. 252. Farrell. 137. Gof. 163. 243. 5 Mcd. 541. Holm. 19. 12 Co. 76. Sall. 543.

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and therefore, in an action on a promise in an inferior court, not only the promise, 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 curiae," or if it had been for goods there sold, the plaintiff would have had no need to lay, that the defendant affirmed to pay "infra jurisdictionem curiae," because the plaintiff could only regularly be obtained by its appealing on oath made that the fact did arise out of the jurisdiction, and that the defendant tendered a foreign plea, which was refused, 6 Mod. 461. circus. 402. 1 Per. Will. 476.

In the case of "Mundyke v. Sinn" it was greatly infinued upon, and that though the party neglected to plead to the jurisdiction, the superior courts might assert jurisdiction, the superior courts ought to grant a prohibition; 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 agreed that the inferior courts, after an impulsion, the party cannot apply for a prohibition. 2 Mod. 271.

But in the abovementioned case the 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; 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 intened 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, &c., or if the plea be not accepted, or is overruled; in all these cases a prohibition likew West. will lie at any time. 2 Mod. 273.

A motion was made for a prohibition to be directed to the sheriff's court in "Brijles," on suspicion that cause of action arising out of the jurisdiction of the sheriff's court ought not to be sued there; and this motion was opposed by the defendant. The action, before he had appeared, to try the proceeding was brought in the court, proceeded to attach his goods in the hands of a garniheree, and Sir B. Skinner opposed the motion; because the defendant could not pray a prohibition on suspicion of a matter which he could not plead; and as here he could not plead this before appearance, he ought not to make such a motion before appearance. And per Hild. Ch. J., a man shall not plead to the jurisdiction until he appear; but if the original cause of action arose out of the jurisdiction of the court, the garniheree may plead it; and of that opinion he held "Hild. Ch. J. but if it was debt upon a simple contract, it is attachable where the person of the debter is. 1 Lord Raym. 346. Clerk v. Lieth.

So in the case of "Clerk v. Andrews," where Skinner moved for a prohibition to the court of the sheriff's court to stay proceeding, where they attached the debt of the garniheree, because it arose out of the jurisdiction but it was denied, because the debt was upon simple contract, which follows the person of the debtor. 1 Show. Rep. 9, cited. 1 Lord Raym. 317.

5. In what cases prohibitions are to be granted to the superior courts.

If one sues another in the spiritual court for a debt, the defendant shall have a prohibition. So it is to suit for a treafrey. 1 T. N. B. 40.
If the spiritual courts take upon them to try the boundaries of a parich, a prohibition lies. 2 Red. Ait. 191. 7 Ca. 44. 1 Rel. Rep. 332. Cae. Edit. 218. 3 Lea. 829. 3 Keb. 286. S. P. par. Pake Ch. J. because the jurisdiction is the ground thereof.

As a fait be a parson for tithes, and the de-
mand be that, the place where is in another parich, 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. Ait. 282. 1 Shaw. 10. cited. Niy 147. S. P.

So if a vicar of a parich libelis against another to avoid his tithes, that D. be a parich of itself, and not a chapel of ease; a prohibition will be granted, for they shall not try the bounds of the parich. 2 Rel. Ait. 297.

So if the question be in the court chistian, whether a church be a parochial church, or but a chapel of ease; a prohibition lies. 2 Rel. Ait. 301. several cafes to this purpose.

But if the bounds of two vills lying in the fame parich come in question in the spiritual court, no prohibition lies; for that such bounds are triable in the ecclesiastical court. 3 Rel. Ait. 275. 2 those of pariches are not. 1 Lea. 78. Peller v. Yorolen.

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 stepping up the usual way, he may have his remedy in the ecclesiastical court, grounded on the statute 2 Ed. 6. Buss. 67. 1 Ten. 230.

But if the question be, whether he is to have one way or another, or whether such a way be a highway or not; such a prohibition is to be heard in the court. March 45. 1 Buss. 67. 2 Rel. Ait. 287. S. P. adjured.

So if the churchwardens of a church sue for a way to the church, which they claim to appertain to all of 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, influtted and anduced, and a suit is commenced in the ecclesiastical court to avoid the inflitution, supposing it not valid; though the thing be of their cognizance, yet becaufe the induction, which is temporal, and goeth to the churchyard, D. is directed to the I'Hb. 15. Latch. 205. 1 Buss. 179. Lit. Rep. 165. Poph. 133. 1 Rel. Ait. 282. 1 Shaw. Rep. 10.

If there be a suit for tithes in the ecclesiastical court, and the tenant pleads, that the party whoues is not in-
conduet, but that by ii. is; and this plea, because it goes to the right of the incumbency, is rejected, a pro-
bhibition lies; for by denying the tenant this liberty he might be twice charged for tithes. Cae. El. 228. 3 Lea. 265. Green v. Brettenden.

There are frequent inftances of prohibitions being grant-
ed to the ecclesiastical, to rait suits for fees by them oucted, and in their courts, on this fonadion, that demands pro opere & labore are properly determinable at Common law, and that fees cannot be flected 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 proctor or an officer being temporal, the remedy ought to be by quantum meruit; or in cafe it be an office of freehold, by affile; the denial of just fees being a deficient; and therefore it seems to be now fet-
tled, that neither a proctor nor regifter can sue for fees in the spiritual court, but that the proper remedy is, in cafe of a fee certain, by an iidetator aliafindum, or in cafe it is laid not to be necessary to prove a recitier, that being by law. 2 Rel. Rep. 59. 1 Shaw. 628. 1 Medic. 176. 2 Keb. 615. 3 Keb. 203, 441, 516. 1 Salt. 333.

If a legatee takes a bond from the executor for pay-
ment of the legacy, and afterwards sues him in the spiri-
tual court for the legacy, a prohibition will be granted; for by the taking the obligation the nature of the de-
mand is changed, and it becomes a debt or duty recover-
able in the temporal court. Yelv. 34. 2 Ten. 31. but 2 Rel. Rep. 160. S. P. cent.

Matters of freehold, and the rights of inheritances, are only determinable in the temporal courts; so that the ecclesiastical courts intermediate with them, a pro-

As in a seifment of tithes and lands, where there is no livery, if they do adjudge the tithes to pay, notwithstanding there is no livery, a prohibition will lie. Cae. Jas. 270. 1 Ten. 41. cited.

So if a man devises, that his lands shall be sold for the payment of his debts, and that the overplus shall be paid to such and such perfon in certain places; the legatees in this cafe cannot sue in the ecclesiastical court; for the provifions intended them arose originally out of lands, and their proper remedy in this cafe is in a court of equity. Dyer 151, 264. Hod. 265. 2 Rel. Ait. 285—5. 2 Shaw. 59. 51.

But if a rent be devised out of a farm for years, the ecclesiastical courts may hold plea thereof; for the terms for being years only a chattel is testamentary, and con-
sequently the rent devised thereout. 1 Sid. 279. 2 Red. 5. 1 Lea. 179.

The rights of freehold, or 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 shoulid not be tried in the spiritual court, though the subjedt matter be spiritual; because the office in the matter of freedom is for that rea-

Trefpafts on a glebe being freehold, cannot be deter-

A parfon libelis against the defendant in the spiritual court of York for having cut elms in the church-yard; and a prohibition was granted, upon fuggefion that they grew on his freehold. 1 Ed. Raym. 212. Hilliard v. Jefferfon.

For more learning on this subjedt, fee 3 Boc. Abr. and 19 & 18 Vin. Abr. tit. Prohibition.

Prohibito de wafto birtica parti, is a writ judicial, directed to the tenant, prohibiting him from mak-
ing waft on the land in controversy during the fuit. Reg. ficul. fol. 21. And it hath been adjudged, that a prohibition shall be granted to any one who commits waft, either in the bowels, or buildings of the incum-
 bent, or who cuts down any trees on the glebe, or doth any other waft. Mar. 917. 3 Nifl. 17. 4

Pfo Individo, is a perfonifion or occupation of lands or tenements, belonging to two or more perfonis, where-
of none knows his several portion, as eftapers before the union, regifters and profcers in those courts, and on this foudation, that demands pro opere & labore are properly determinable at Common law, and that fees cannot be tendered 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 proctor or an officer being temporal, the remedy ought to be by quantum meruit; or in cafe it be an office of freehold, by affile; the denial of just fees being a deficient; and therefore it seems to be now settled, that neither a proctor nor regifter can sue for fees in the spiritual court, but that the proper remedy is, in case of a fee certain, by an iidetator aliafindum, or in case it is laid not to be necessary to prove a recitier, that being by law. 2 Rel. Rep. 59. 1 Shaw. 628. 1 Medic.

The custody of the Conventuon house. (Prelate demus convecationes,) Is an officer chosen by perfonis eccle-
siastical, publickly assemblcd by virtue of the King's writ for every parliament; and as there are two houses of conventio, so there are two praebutes, one of the lower, and one of the higher house. He of the lower house, present upon the frift assembly, by the motion of the bishop or praebute being chosen by the members of the frirst lower house, is pretended to the bipses for praebute, that is, the perfon by whom they intend to deliver their refo-

lutions
be a breach of the bond, 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. 260. 2 Med. 44. And when an action is grounded on a promise, payment of some other legal discharge must be pleaded. 1 Med. 210. If a promise be to make a gift by several monthly payments, the promise being intire, a breach of payment of the first month is a breach of the whole promise. 2 Rep. 47. See Action, Assumpsit.

Promoters, (Promoters,) 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 penalties. Thus, a promotor, among the Romans, was called promotor or deforator. They belong especially to the Exchequer and King's Bench. Smith de Rep. Angl. lib. 2, cap. 14. Coke calls them turbulens hominum gener. 3 Inst. fol. 191.

Preamble a law. (Preambula legem) Is first to make a title, and then to declare, publish and proclaim the title to public view, and to promulgate, signifies publish. 4 Blagdon. 6 & 8 H. 4. 2 Rep. 43.

Preamble. See Preambleary.

Pecul, (Peculio) Is the swine or the flesh of any matter alleged: Bratton says, There is probatio duplex, viz. vista, as by witnesses, voce voce; and Martia, by deeds, writings. &c. A wife cannot be produced either against or for her husband, nisi de suo fato animae in carmine sua et a fide. It might be a case of irreconcilable discord, and a mean of great inconveniences. Co. Rul. Lib. 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 to be void, because it ought to have been tried by a jury. 1 Bailiff, 96. Gleamhs v. Brown. 6 Rep. 20, in Gregory's cafe, S. P. Mor 113, contra per Monensad.

But where the defendant was bound to pay the plaintiff ten pounds within ten days after his return from Jerusalen, he proving that he had been there; in this case it was adjudged, that the plaintiff need not make any proof to the bond, but for the defendant not to be done by jury in so short a time as ten days after his return; for where a particular form of proof is directed, or how it shall be made, there the plaintiff may bring his action, and aver that the thing was done, and the defendant may take issue that it was not done, and then the plaintiff must prove the doing it. 1 Bruntz, 57. Storey v. Dean. 1 Bruntz. 33. S. P. Poeh. 14. Jat. Cas. Eff. 205. 2 Cr. 232, S. P.

The condition of a bond was to pay all such money, or make satisfaction within three months after due proof made, either by the confession of the apprentice, or otherwise, for any wares or goods, that he shall warehouse during his apprenticeship. And if the action of debt brought on this bond, the defendant pleaded that the plaintiff had not proved that the apprentice had waisd any of his goods before this action brought; the plaintiff replied, That the apprentice, &c. had ware 1400 pounds value of his goods, and that by a writing under his hand he had conferred the same, &c. And upon de- murrer it was objected, that the confession ought to have been upon an action at law brought against the apprentice, or that the proof ought to have been upon a trial at law, because the law regards no other proof, but that which is on record; but adjudged, and affirmed in error in the Exchequer-chamber, that though generally proof shall be intended to be made at a trial by the jury, yet in this case it is being referred to the consideration of the party, 'tis sufficient if he confesses in his hand, which confes- sion shall not being to the oblige, but prima facie it shall be a good proof. 2 Gra. 301, Geld v. Death. Hob. 92. S. C. Mor 825. S. C. 888. S. C. 1 Rep. 222. 261. 2 Rep. 40. Loe v. Fitch, S. P. 1. 238. And the court decreed for having a bond on a new condition, as that before mentioned; the defendant pleaded that no proof was made by the confession of the apprentice, or otherwise, that he had imbezled any goods; the plaintiff replied, That such a day proof was made, and that on the same day the plaintiff gave notice thereof to the defendant, but he had not made satisfaction; and upon demurrer to this replication, the defendant had judgment, because the condition of the bond, being that if the apprentice imbezled the goods, &c. and it be suffi- ciently proved, 'tis not sufficient for the plaintiff to say, that proof was made, but he ought to allege in facts, that the apprentice did imbezle, &c. besides he did not allege, or make it, for in truth ought not to be in this action, because the defendant had three months time to make satisfaction after proof made, and notice given thereof. 2 Gra. 438. Leigh v. Fillen. Hob. 217. Craythay v. Woodyard, S. P. 1 Bailiff. 40. S. C.

The plaintiff and defendant disscourting about a wager, the plaintiff said it was won by the defendant, and the defendant replied, Give me a billling, 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 cafe brought against the defendant upon his promise to pay the five pounds, the plaintiff alleged in facts, that he had got the wages by deceit; and it was adjudged, that he need not make any proof of it, but in this action. 2 Bailiff. 59. Gregg v. Griffin.

The masters and clothworkers of Ipswich, brought deb- upon a by-law, which was, that no seren should exercise the art of a clothworker or tailor, within the tied town uniefs he made proof before them, or any two of them that he had been apprentice to the trade for seven years. It was adjudged, that this proof could not be brought in during his apprenticeship, and probably the corporation may not allow such proof, and there the party may have no remedy against the corporation, but he must content himself with the by-law, which is his maintenance, for which reason the by-law was held void. Coll. 253. Ipswich Clothworker's cafe.

Where a prohibition was granted upon a suggestion of a mode, and afterwards this suggestion being not proven in six months, a contusion was thereupon granted to the party that had the suggestion, and afterwards have another prohibited in the same cause. Mor 117. Biggs's cafe.

Upon a suggestion of a mode decreed, the parties were at issue, and the witnesses proved that for a long time, they had heard say the occupiers of the farm, &c. had used to pay yearly to the parson three shillings for all the fish that were caught in the pond, which was sufficient to maintain the suggestion within the statute. 2 Ed. 6. 44. Whit. v. Patt.

Adjourn, in which the plaintiff declared, that in con- sideration he would deliver to the defendant the cattle which were then in the pond, he promised, that if during his apprenticeship, or otherwise, the defendant should have the use of him, or to the land or house, he had the right of commons or of such place in Wimborne, he would pay the plaintiff such sums as the plaintiff averred he had promised, or proved. The defendant pleaded, that H. R. was steward of the court, and that he, (the defendant) was there ready to make it appear, and the steward refused, &c. and upon a demurrer, this was adjudged an ill plea; and 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, (viz.) that it shall be in such a manner, or before such a court, the modification must be observed. Sid. 419.

But for two hundred pounds, upon non-performance of articles, in which the plaintiff might have recovered, and the damages for the non-performance of all the agreements, we bind ourselves (but did not say to whom) in two hundred pounds to be forfeited, upon due proof of any part of the articles on either side, but did not say upon due proof of the breach of the articles; upon demand to this declaration, it was objected, that there ought to be an intention to entitle him to the goods, or to recover them, and that the proof ought to be in the action now brought; and this matter is the law, that when a man is bound to prove a thing generally, without referring to time, place or persons, as in the principal case, there must be, by a jury in the same action; but where the parties by any agreement underhand referred the case to the court, it was a proper proof, that still prevail against the legal construction of the word proof, (viz.) by jury. 2 Laub. 467. Hot. v. Pitt.

Debt on a bond, dated the 22d day of August, conditioned to pay ten shillings, for every twenty shillings, which the plaintiff shall by sufficient reason make appear to be owing to him, and upon demand to this declaration, it was objected, that the plaintiff did not make it appear that J. K. owed him any money; the plaintiff replied, that before the said 25th day of November he and the said J. K. accounted, who then acknowledged that he owed the plaintiff three hundred and ten pounds; and upon demand to this replication it was objected, that the court was not a legal proof of the debt, for the law knew no other proof, but before a jury in a judicial way; but adjudged, that the confession, or acknowledgment of J. K. was a sufficient proof, and that it would be lawful for a man to prove the bond had not been brought against J. K. himself. 1 Laub. 663. Ladd v. Gerrard. See Evidence. Trial.

Pro pertinent libris, is a writ for the partition of lands between creditors. Reg. Orig. fil. 316.

Properiæ. (Propriciæ, Proprietas.) Is the highest right that a man hath, or can have to any thing, and no way depending upon any other man's courtely: And this word is used for that right in lands and tenements that common persons have, because it importeth as much as utile dominium, though not dictum. See fct. And these are three manners of rights of property, that is, property arbitrio, property aequitatis, property qualitatis, and property facultatis. Cowell. See Rep. 7 Rep.

If a man hires a horse for a particular time to ride such a journey, he hath a special property in the horse during that time against all men, even against the right owner, who cannot justify the taking it during the time it was hired for, though upon a pretence of the other's consent. It is of such a hire there is no other place but was agreed upon. Gla. Jac. 236. pl. 7. Hot. 7 Jac. B. R. Lee v. Atkinson and Britts. Brownl. 217. S. C. and P. Y. év. 72. S. C. and P.

Whatever an apprentice gets belongs to his master, and whether legally apprenticed or not, is no way material. But it is thought it be by fait de fait. 3 Sales. 68. Tin. 2 Ann. Var. 8. Dennis.

A prior took a man's fon, and put a suit of new clothes upon him. The father took away his fon, and the prior brought trepass for the clothes; but adjudged he should be heard, because he had assaulted it to his body.


So if an adulterer cheats a man's wife, he hath may take his wife's horse for a hire, and sell the horse, but the son and the wife have two suits of apparel, one for her body, and another suit in their chamber, another the father nor the husband can take the spare suit for the law which tolerates necessity, does not tolerate excision. Mich. Arg. S. P. Putting a feet on a dead body, gives no property to the dead body, but the property remains to the first owner of a dead body in capable of propri- ety, and a man cannot relinquish the property he has in goods, unless they be vested in another. 12 Rich. 2 Mich. 171 fist. Hayne's cafe.

Son, improved his father to buy a slave for him; fa- ther agrees for it in his own name, and pays part of the money down; and had a note for the remaining re- mend 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 devolved and lodged in the fon; but if the bill of sale has been made, to the fon 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 remains in vendor till payment of the money, or delivery of the goods. Per Hil. C. J. 12 Nbl. 314. Mich. 11 W. 3 B. R. Ford v. Hopkins. A. by articles agrees to pay $35, for every 100 sacks of wood lying in such a wood, and for as many more as shou'd be felled till Michaelmas following. Agreed per cur. that so much an hundred by retail was the fame thing; and that here either party may tell out, and that the other may fhow that, and join issue upon it; and that the property of every hundred that was cut at the time of the agreement did vest in the plaintiff, and for the rest as they were cut down. Far. 88. Nbl. 1 Ann. B. R. 172. Why v. Leggath. 4 Sales. 635. S. C.

If I require B. to buy a gelding for me, and to repay B. 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 required B. to buy the gelding for me. Per tit. cur. 1 Bald. 169. Tit. 9 jac. 1. in cafe of Mus v. Mus. See 18 Tit. At- tit. Property. Prophecies, (Prophetes.) Are by our fathers taken for foretelling things to come in dark and ambiguous speeches, whereby great combinations have been often cooled; as in the time of the attempts made by the Thespians to these speeches promoted good successe, though the words are metaphorically framed, and point only at the cognizances, arms or some other quality of the parties. Stat. 3 Ed. 6. cap. 15, and 5 Titia. cap. 15. But these for distinction sake are called fons, falsé and fantastical prophecies. 3 Inf. 10. 150. By flat. 10. 95. 15 is excluded. That if any per- son shall advisedly and directly advance, publish and set forth by writing, printing, singing or any other open speech or deed, any fon, falsé or false prophecies, under or by the occasion of any arms, fields, beals, badges or other like things accouphed in arms, ensigne- nizes or figories, or upon or by reafon of any time, year or day, name, bloodshed or war, to the intent thereby to make any rebellion, insurrection, diffension, loss of life, or other disturbance in the realm; and shall be convicted thereof before a judge of alize, or justice of the peace, within six months after the offence commit-
PRO

But the four first shall be imprisoned for a year, and forfeit to the King half to him who shall sue for them in any court of record.

Proportion. See De iure modo jurat patientis.

Proportion. Proport, Intention or meaning, Cawd., ed. 1727.

Proposals, 4th chapter of Coke's third Inst. fictitious, are instituted against monopolies, preposterous and profectors, where it seems to signify the same as monopolies. Cowell, ed. 1727.

Proprietary (Proprietarius) is he that hath a property in any thing, qua nullius arbitrio omnino; 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 abbots and priors had to them and their succeors. See Appropriation.

Proprietary (Prouinmata) is a writ that lies for him that would prove a property before the sheriff. Reg. Orig. fol. 83, 85. See Receipt.

Propita, that is, in proportion, Cawd., ed. 1727.

Prouit quizá, (Proumatiis) To prolong, or put off to another day. Stat. 6 H. 8, cap. 8. The difference between a proteration or an adjournment, or continuance of the parliament, is that by the prorogation in open court there is a feeon, and then such bills as passed in either house, or both houses, and had not the royal af- fent to them, must at the next assembly begin again; for every prorogation is in law a new parliament, but if he be not adjourned or continued, then is there no feeon, and consequently all things continue in the same state they were in before the adjournment. 4 Inst. fol. 27. This distinction and difference between proroga- tion and adjournment, has not been long in use; for an- ciently they were used as synonymes. Cowell, ed. 1727.

Prostrate, is he that falls as a cause in another's name. See Piomet.

Protection (Protection), Hath a general and a special signification: In the general it is used for that benefit and safety which every subject, denizen or alien, especially secured, hath by the King's laws, and so it is used 25 El. 3, 22. Protection 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 reasonable caues him thereunto moving, which is a branch of his prerogative. And of this Fiskerbert in his Nat. Breve. fol. 28, makes two kinds; the first he calls a protection cum clausula volumina, whereas he mentions four particulars: 1. A protection quia profectorum, for him that is to pass over fea in the King's service. 2. A pro- tection quia moratus, for him that is abroad in the King's service upon the sea, or in the marches. 7 H. 7. cap. 7. A protection for the King's debtor, that he be not sued or attached till the King be paid his debt. This same Fisc. call mutatorum. And 4. A protection in the King's service, or in the marches of Scotland. Stat. 1 R. 2. cap. 8. Reg. Orig. fol. 23, and Britten, cap. 123. The second form of protection, is cum clausula volumina, which is granted most commonly to a spiritual company for their immunity, from taking of their cattle by the King's ministers: But it may be granted also to one man spiritual or temporal. Reg. Orig. fol. 22, 23. Note these protections extend to pleas of dower, quiet incumbrances, &c., usufruct, &c. of usufruct, dower in possession, and attainants and pleas before Justices in Eyre. Cowell, ed. 1727.

Times to be paid in the Exchequer for protections to persons beyond sea, St. de Libert. pensuri. 27 Ed. 1. H. 1. Protection may be challenged for that the party is out of the King's service. St. de Prest. 33 Ed. 1. H. 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, 25 Ed. 3, fl. 5. c. 19.

That is, it shall be allowed for debts contracted after the date, 1 R. 2. c. 9.

A protection quia profectorum 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 repeal his protection, 13 R. 2. fl. 1. c. 16.

This protection shall be allowed in actions for escops, 7 H. 4. c. 4.

To be granted to soldiers going with the King without exception of affiles of novel disciflis, 9 H. 5. c. 3, 4, 6. c. 2, 8 H. b. c. 13, 14 Ed. c. 2. 4 H. 7.

Not to be allowed to a patentee in a ficta facies upon a traverse of an office, 23 H. 6. c. 16. See 18 Ed. Abr. tit. Protection.

Protection of ambassadors. See Ambassadors.

Protection of parliament. Peers and members of parliament, &c. by their privilege, may protect their, mensal s, and those actually employed by them in service, but by a later order, this extends not to other or written protections. One Carter, 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 dam- age of the peers, and in breach of the order of that house; and being charged with other crimes, re- flecting on the house of Peers, he was sentenced to pay a fine, and to stand in the pillory, &c. Mid. Caf. in L. & E. 341. See Pridgley.

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 falsa persona, but this is more properly privilege.

Protectionum, The statute allowing a challenge to be entered against a protection, 33 El. 1. See Dis- traction.

Protest (Protestation), Hath two diver applications, one is by war of caution, to call witnesses (as it were), or openly affirm, 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 jurisdiction is doubtful, or to answer upon his oath farther than by law he is bound. See Pleasam, fol. 676, Grefwoll's case, and Reg. Orig. fol. 306. By the bill of exchange. 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 al- leges; if at my coming, I find not myself 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 goods 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. Cawd., edit. 1727. See Bills of exchange.

Portlands. See Proteration.

Proteration (Proteration), Is a defence of safeguard to the party which makes it from being concluded by the act of a slave long, that title cannot be joined by it. Plen. fl. 276, whereby see Reg. Orig. fol. 316. It is a form of pleading when one does not directly affirm, or directly deny any thing that is alleged by another, or which he himself alleges. Cawd., ed. 1727.

Proteration is a form of pleading, when one does not directly affirm, or directly deny anything that is alleged by another, or which he himself alleges. A protestato that he made no testament pr pratio that he made not the plaintiff his executor; because if he made no testament he could make no executor. Health's Med. cit. Pl. C. 276, Grefwoll's v. Fox, and such like cases. If a man pleads any thing which he does not directly affirm, or that he cannot plead, for fear of making his plea double; as if in conveying to himself by his plee a title to any land he ought to plead diverse defences by diverse persons, and he dares not affirm that they were all false at the time.
of their death, or although he could do it, yet it will be double to plead two defendants, of both which every one by himself may be a good bar; then the defendant ought better to plead the negligence of the plaintiff; as to say (by prothonotaries) that for a one died feated, &c. and that the adverse party cannot travel. 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 prothonotaries, and he shall and may take on such part of the matter to be pleaded as he shall think fit, and then he can make his plea in his parts, &c, and so he may take issue upon the other part of the matters; and then he is not concluded by any of the suit of the matter which he hath by prosthony for, but that he may afterwards take issue upon it. Rees, 18. A Law to Proclamation.

Prothonotaries, (Protonotarius, i.e. primus notarius) is a chief clerk of the Common Pleas and King's Bench, whereof the first hath three, the other one; for the prothonotary of the Common Pleas (in flat. 5 Hen. 4. c. 14.) is termed a chief clerk of that court. He of the King's bench is the judge to whom every suit that comes in that court is committed, whether in law or equity, and the Clerk of the Common Office does all criminal causes in that court. Those of the Common Pleas, first the order of 14 Jac. upon an agreement made between the prothonotaries and officer of that court, (who before did enter all declarations and pleas, whereunto a servant's hand was not required) do enter and enrol all manner of declarations, pleadings, alliances, judgments and attains. They make out all judicial writs, except writs of habeas corpus, and distringuerum, for which there is a particular office created, called The Habeas Corpora Office. They also make out writs of execution and of seisin, writs of privileges for removing causes from other inferior courts of record, in case where the party hath cause of privilege; writs of procedendo, of fete faciae in all cafes, and writs to inquire of damages; and all proceed upon prohibitions, and upon writs of audit quarepel, and false judgment, cum nullis autibus. They enter and enrol all common recoveries; and may make exemplifications of any record before them and make orders, and cross there rolls are made up, and brought into the treasury of records in that court. Cowell, edit. 1727.

The prothonotaries were scrivens, who took the acts of the court, and had the same name in the courts of the empire, and in the first institution of the court of C. B. were three judges, each had his prothonotary. Gilb. Hist. of C. B. 48.

The learned Sir Henry Spelman, in his Gloss, verbo Protonotarios, says, that he is primus notarius vel principium notariorum, and that the word is of a Greek and Latin derivation, ut pro auditorium genus.

J. B. c. 8. pleaded prothonotary for the pleas in C. B. and he was favor of to keep his office in peron, or clerk for him, and when he fits in court the clerk shall not sit there; and certify, but that both shall not be together, but out of court he may have as many clerks as he will, and if any will swear that he is not able to pay for the entailing of his plea in the roll, then he shall enter them without taking any thing. Br. Office & Cas. 15. How many clerks may be kept by a prothonotary, see flat. 2 Gen. 2 e. 23. sect. 16. under title Attorney.

Protonotarius, (Prothonotarius, i.e. primus notarius) was he whom our Kings heretofore made chief of Winifler-Parli., to hear all causes of death or malady there. Camb. Brit. pag. 215. A kind of a Lord Chief Justice in Eyr. Br. Office & Cas. 15.

Proctor, (Proctor) mentioned in flat. 28 Ed. 1. and 5 H. 4. cap. 2.) See Appr. and 3 Jar. Inst. fol. 129. A man became an approver, and appeald five, and every of them joined with battle him: Et durum peressum sibi omne amicitiae, & prosector deivit usus quinque in avd-
Publication. Accounts. Commissioners are to inquire of the accounts of their customers and other the King's officers, after paid in the Exchequer, and it is determined upon, they shall pay treble damages, by Stat. 6 H. S. 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 his hands, in the present, or 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.

Publication of a will. See Liber.

Use by the public. Commissioners are to inquire of the accounts of their customers and other the King's officers, after paid in the Exchequer, and it is determined upon, they shall pay treble damages, by Stat. 6 H. S. 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 his hands, in the present, or 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.

Publication of a will. See Liber.

Public faith. (Fides publica, 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 must bird and cautious rebellion against the King about the year 1642. Cowell, edit. 1727.

Public worship. See Monuments, Recantations, Service and Sacraments.

Purgatory. (Purgiium, French purgatoire) virginity.


Puritans. (Tr. Purjio) Younger, born after. See Puritans.

Puritans, A parliament. Cowell, edit. 1727.

Puttin, (San. Puli) A pool or lake of standing water.


Puttoman, A court held in the woods. Et est quod, potest dicere good de purgatorius, et absolvit omni meritut per tantum tempus, &c. Broughton, lib. 3: cap. 23: por. 5.

Puttaz, The plaintiff or accor. Leg. L. 1. c. 25. and 26. and 27. is to accuse any one. Cowell, edit. 1727.

Puttarts. An examination: From passare, which signifies to afford, and this is called from them who before they were admitted into the monastery, passaret ad press, for several days before they entered.

Puttart, 2 tom. 1735.

Puttyf, A pound, a pindoll. Id. ib.

Punishment. (Penal) It is the penalty of transgressing the laws. And as debts are discharged to private persons by the consent of the creditor, or by the order of the court, or by the writing or pawning of the debtor, or by any other means, it is to be 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' the right of inflicting punishments to provide for the sacri- fice of society, was originally (before commonwealths were erected and courts of justice ordained) in the hand of every man, being equal to, and independent of others; but since, it has resided in the hands of the highest pow- ers, as subjects to other states, having taken away that primi- tive right: However, this power and natural right of punishment remains in those places where the people are not subjected to some form of government.

Puritans. (Aqiputum, perpulium, purgatorium) Sig- nifies, by virtue of the natural right of punishment. All, or some, money with money, or by deed or agreement, or it may be, by some other means. A court of justice is by defendant, or hereditary right, and conquitiuntum purgatorium is where two or more perform join in the purchase.

Purser, Is where lands, &c. are held for another's life. See Druitt.

Purchaser, A public income, or the income of a man or state, or the income of a person. The word purchase is used in the sense of purchase, or which is always intended by title, either from some condemnation, or by gift; (for a gift is in law a purchase) whereas defendant from an ancestor comes of course by act of law; also all con- tracts are comprehended under this word purchase.

Purchasing in opposition to the income of a man is taken to be a man performing something, that is a de- ficient: But where a person takes any thing from an an- cessor, or others, by deed, will or gift, and not as heir at law; that is a purchase. 2 Litt. Ab. 403.

Any estate that originally went in the heir, and never was nor could be in the ancestor; such heir shall take by way of purchase: And when the thing might have velled in his ancestor, tho' it be first in the heir, and not in him all; the heir shall have it in nature of defeat. 1 Rep. 95, 126. An heir takes an estate by will in another manner than the Common law would have given it; there he takes by purchase, and not by defeat; but then he must be the right heir. 2 Lev. 79.

1. Who shall be deemed purchasers?

2. Of purchasers for a valuable consideration.

Purchaser, A enters into partnership in 5ths, with three others, for 21 years, for digging mines in his lands, A. to have two 5ths, and all in consideration of his own ownership of the land, to have a tenth more out of the share of the other partners. Purfants to the articles, they searched for the mines, and after two years time, and the expense of about 1200, they discovered a valuable mine, and worked for about three months, and then A. dies, and his widow fells up a voluntary settlement, made at the time of her marriage. The court inclined that the partners were purchasers, and that the voluntary settlement should not bar against them. 2 Vern. 396. pl. 315. Mich. 1695. in Can. Shaw & al? v. Lady Standish, widow, and Sir Richard Standish for Joan. Each, the husband in letting in an in- cumbency on her jouissance, and barring the estate-tail, and then limits the use to the husband for life, remain- er to the wife for life, remainder to their daughter. Per Lord Keeper Wright. The daughters are not purchasers fo as to float out a judgment-corrector of the husband's, antecedent to the barring of the estate-tail, it might have been a good conclusion for both, but it was not expressed in the deed, to be any conclusion for letting the estate upon the daughters, but was a voluntary gift of the wife to her husband, and therefore the daughter's estate must be taken to be voluntary; and so a judg- ment-corrector ought to have the allowance of this court before he was admitted. Sir K. Wright, 7th ed. 114. p. 10. Tryn. 1700. in Can. Bull v. Bungford. Every lefsee is a purchaser; per LD. Chan. Macfiey- feld. 9 Mod. 59. Mich. 10. 70. in the cafe of Affes v. Bretland. See 2 Vern. 337.

A. felled in fee, felled his estate in 1712. to the uk-
power of revocation, by any writing signed, \( \&c \), and att- &c. ttended by, three, \( \&c \), credible witnesses. In 1715, A, by deed, attested by two witnesses only, reciting, that he was indebted, as in a schedule annexed, conveyed his estate, bound to defendant for the just and true payment of his said debts, without disrupting the estate. C. of the daughters of two sisters, her heirs at law. The deed of 1715 was kept private till after the death of W. S. the surviving trustee in 1724, and was then laid before counsel, who directed, that the heir of W. S. should a.ffirm the legal estate to the trustees in the deed of 1712, and that the act of conveying that deed was entered. A mortgage of marriage between Lord Faulconbridge and B. a marriage settlement was prepared by the same counsel, as counsel for Lord Faulconbridge, who made a settlement on B., in consideration of the great estate in land which he was to have with her. The surviving trustee in the deed of 1712, joined in this marriage settlement. C. brought a bill claiming a moiety of the estate of A. as coheirs with B. for that the deed in 1715, was a revocation of the deed in 1712. Lord F. pleaded, that he was a purchaser under the deed of 1712, without notice of that deed, and that the settlement made by him on B., was good in law, and that the settlement of B. on A. was extinguished. The surviving trustee in that settlement was entered into the marriage settlement; and that though the purchase was not of the legal estate, but the true estate, it will make no difference, according to \( \text{Barber and Bodington's} \) cafe, 2 \( \text{Benn.} \) 599, and that neither will it differ the case, though there was no actual conveyance; for as to the trustees, in the deed of 1712, always acted under that deed, for B. that trust shall subsist as to himself, who is a fair purchaser; and that he shall not be affected by con- structive notice to his counsel, as having been advised with on those two deeds in 1724; for that it must be intended, that at the time of the conveyance being concerned for him, which was 1712, afterwords, in 1726, he had forgot that he had ever seen this deed of 1715, there being an interval of two years between his first seeing it, and his being counsel for this defendant. And for these reasons, the court held, that this could not be notice to his lordship. \( \text{Id. Ch. B. Kayeels} \) who assisted the Lord Chancellor, held, that the Lord Chancellor had not agreed, and there was no actual conveyance was made to him. The Master of the Rolls said, that to be a purchaser in the notion of equity, there must be an actual conveyance and a confideration paid; and therefore, if at the time of the marriage the deed of 1712 flood revoked, the trustees could be sued for the trust. \( \text{Benn.} \) 258. Lord Chancellor decreed a moiety of the estate, and an account of the rents and profits to C. since the death of A. See \( \text{Gibb.} \) 207. and \( \text{L. P. Conv.} \) 391 to 402, 12 \( \text{June} \) 1730. Fitzgerald v. \( \text{Faulconbridge.} \)

2. Of purchasers for a valuable consideration. A purchaser that comes in without notice of a rent-charge shall not be chargeable therewith, although given to a charitable use. \( \text{Teh.} \) 258. cites 6 \( \text{Car.} \) 6 Maynard v. \( \text{Panagers de Estrat-Frangell.} \)

A bill was to be relieved on a trust, and charged defendant with notice; defendant pleaded he was a purchaser for a valuable consideration; this was objected to as not good, because he did not say what the valuable consideration was; for 5. is a valuable consideration, but yet it is not an equitable one; but the court declared it too. \( \text{Cham. Cafes} \) 26. \( \text{Mich.} \) 15 \( \text{Car.} \) 2. \( \text{Mar.} \) v. \( \text{Mayhew.} \)

Notice of an incumbrance before the conveyance is executed, shall charge the purchaser. \( \text{Cham. Cafes} \) 34. \( \text{Mich.} \) 15 \( \text{Car.} \) 2. \( \text{Mar.} \) v. \( \text{Mayhew.} \)

Purchaser shall not be affected by a judgment in equity, without express notice of it before the purchase, otherwise it is at law. \( \text{Cham. Cafes} \) 37. \( \text{Mich.} \) 15 \( \text{Car.} \) 2. \( \text{Churbill v. Greene.} \)

A purchaser of lands from A. which \( \text{B.} \) makes title to, getting the deeds that make out B.'s title, is not liable, as the vendor had notice of the title. \( \text{Cham. Cafes} \) 69. \( \text{Pigli.} \) 17 \( \text{Car.} \) 2. \( \text{Fery v. Fagg.} \)

Plea of his being a purchaser for a valuable consideration was over-ruled, because he did not plead the purchase made from one of the plaintiff's ancestors; for a purchaser from a stranger, who might have no good title, was held to be an exception. \( \text{N. Ch. R.} \) 135. 21 \( \text{Car.} \) 2. \( \text{Syme} \) v. \( \text{Njuparty.} \)

A. having a long lease of a house, in which his wife had some interest, by her content renewes it for eighty- one years, and in consideration of 400l. affirms it to B. who affirms it to C. his son, who married M. and died, leaving M. his executor; M. on a second marriage conveys it to trustees, \( \&c \), by bill seeks this affi-, and that it was a mortgage, and that B. agreed to execute a reconveyance thereof, \( \&c \), and prayed a red- emption. The executrix pleads she was a purchaser without notice of such agreement; and in consideration of a marriage with J. S. and of undertaking to pay her debts, the assigned the original lease, \( \&c \), such a day to trustees, to the use of her intended husband, not hav- ing any notice of the agreement prior to the executing the said deed on marriage. It was decreed, that defen- dants were in nature of purchasers; and the plea was allowed. \( \text{Finch R.} \) 29. \( \text{Mich.} \) 25 \( \text{Car.} \) 2. \( \text{Harding v. Hardt.} \)

A. indebted by bond, devised a debt to be paid out of his personal estate; but if it were not sufficient, then to fell his real estate, and pay it: the estate was held, and by several meane conveyances came to the defendant, who was sure for the debt as charged on the lands which he had bought. The defendant pleaded, that he had no notice of the demand, and was a purchaser for a valu- able consideration, and that the personal estate was free, and that the purchase money which 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 those on the death of A. which ought to come in aid of him, and decreed accordingly. \( \text{Fin.} \) R. 137. \( \text{Mich.} \) 26 \( \text{Car.} \) 2. \( \text{Proset v. Edwards, Broom & al.} \)

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. \( \text{Finch R.} \) 252. \( \text{Trin.} \) 28 \( \text{Car.} \) 2. \( \text{Duke of Albemarle v. Countess of Perkew.} \)

A voluntary conveyance decreed against a (joint) purchaser for a valuable consideration; but it seems, that the not having notice was the laches of the joint- steeds; \( \text{Cham. Cafes} \) 295, 292. \( \text{Mich.} \) 28 \( \text{Car.} \) 2. \( \text{Bipes v. E. of Barnbury.} \)

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. \( \text{Cham. Cafes} \) 48. \( \text{Hill.} \) 32. \& 33 \( \text{Car.} \) 2. \( \text{Snelling v. Spilde.} \)

Defendant was relieved, because of the trust, the defendant pleaded himself a purchaser, but does not deny notice, and so was ordered to answer. \( \text{Per Lord North.} \) \( \text{Vern.} \) 1779. \( \text{Trin.} \) 1683. \( \text{Bodmin v. Vandenberg.} \)

Bill was brought to prove a will, and perpetuate the testimony of the witnesses; the defendant pleaded him- self a purchaser without notice of any such will, and in- flicted here had been a verdict in accordance of such will (nothing hindering the plaintiff, but that he had a title which 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. \( \text{Vern.} \) 384. \& 390. \( \text{Hill.} \) 2 \( \text{Trin. Car.} \) 2. \( \text{Dowela.} \) 1695. \( \text{Cham. Becher.} \) 207. \( \text{Cham. Strete.} \)

A. mortgaged land to B. and afterwards by his will (having sons C. and D.) deviated the equity of redemption to D.—B. and C. join in an assignment 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 full mortgage. N. Ch. R. 153, Ed. 1. 1659.

Coper v. Corper.

A purchaser, having notice of a settlement whereby B. the vendor was but tenant for life, remainder to his first, Sec. 1. C. if his heir and devisee A. who had no notice; B. died, leaving a son; the bill was dismissed as to C., but declared A. to account for the confirmation money, which he held the estate for, with interest from the demise of B. thereon discounting what was due on a mortgage prior to the settlement which he had bought in. 2 Vern. 384. Mich. 1750. Ferrers v. Curley.

Compelled to forfeit a rule in equity, that where a man is a purchaser without notice, he shall not be anneled 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 other; and therefore dismifed the bill. The case was; A. purchasers of B., who had done an act of bankruptcy, but without notice of it; afterwards a commission is taken out, and there being a term standing out in trust, affignee brings a bill against him, and the purchaser to have the term assigned to him. 2 Vern. 599. Mich. 1707. Wilker v. Bollington.

A bill to redeem lands mortgaged in 1694, to the defendant's grandfather, in the plaintiff's father for 51 years, was void on payment of 130l. and interest. The defendant pleads, that he is a devisee of those lands under his grandfather's will, who in 1692, purchased them for a 200 year term without condition of redemption, and had enjoyed 15 years quiet possession. But the court overruled the plea for the defendant's not answering the bill, and as to the mortgage, whether the plea of the purchase may be true, it may be only a term for years to attend the inheritance. G. Eqs. R. 185. Hill. 14 Geo. Meder v. Birt.

For more learning on this subject, see 18 Vin. Abr. tit. Purchasor.

Purchasor. (Purchasor) Is the clearing a man's field of a creditor whereof he is generally sufficed, 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 appeareth by Stafford. Pl. Cor. Lib. 2. cap. 48. See Clergy, and Wifjm. 1. cap. 2. It is still observed for matters pertaining to the ecclesiastical court, as sufficiency or common fame of incontinency or such like. And here note, That perquisition is either canonic, canonical, 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 sufficed takes his oath, That he is clear of the fault objected, and bringeth a fiftment of his own affections, being not above twelve, as the court shall affigne him, to swear upon their confidence and fidelity, that he sweareth truly. Vulgar perquisition was by fire, or water, or by combat, and both by inquests and Christiani, till by the Canon law aboli

fied. Cowell.

But by the 13 Car. 2. cap. 14. sect. 4. It shall not be lawful for any person exercing ecclesiastical jurisdiction, to tender or administer unto any perccion whatsoever, the oath usedly called the oath ex officio, or any other oath, whereby such perccion to whom the fame is tendered or administered, may be charged or compelled to confess, or accuse, or to perforce him or herself, of any criminal matter or thing, whereby he or she may be liable to sentence or punishment. (Compelled to confess). So that any perccion may still offer himself voluntarily, for the clearing of his innocence, to such perquisition as hath been desir'd. Gib. 1542.

Ancestry, upon the allowance of the benefit of cler
gy; former occasion occasion delivered to the ordinary, to make his perquisition; which was to be before a jury of twelve clerks, by his own oath affirming his innocence, and the oaths of twelve compurgators as to their belief of it. 2 H. 11. 38. Wells's G. L. 669. But now, by the statute of the 18 Edw. 7. cap. 7. this kind of purgation is put away, and the perccion admitted to his clergy shall not be delivered to the ordinary, as before. Prichathorke versus Darton Uttington, mentioned in Stat. 32 H. 8. cap. 21. See Conollarman.

Purlician man. Is he that hath ground within the Purician, and being able to dispense 40s. by the year of freedom, is upon these two points licensed to hunt in his own Purician. Manwood's Forst Law, p. 154, 157. But what he must observe in his hunting, see the page 185, 186, and 187. They are the laws and ordinances of the forset. Manwood's Forst Law, cap. 20, and he calleth this ground either parcellar, or perambulatiorem, or purliue, parly, which he faith, are mistaken for parcellar, let, mun., 3d. and with our first definition it may confift, because such things, as are by those forementioned Kings sufficled to the laws and ordinances of the forest, are now cleared and freed from the fame, as the Civillians call that parum locum, qui jicclusaestrum Res. Regia non est abstrititio, so our ancestors called thus parus, i. parum locum, because it was exempted from that servitude that was formerly had upon it. And whereas Manwood and Compton call it parcellar, we may derive it from servitium, servitus, servitude, servitutatem, servitutis, which for a walketh or coverteth within that circuit, is not liable to the laws or penalties incurred by them which hunt within the precincts of the forest. Cowell, ed. 1727. See the statute 3 Ed. 1. art. 5.

Purpury, Purpory. (Fr. Parpour,) A close or inclofure, also the whole compaus of a manor. Cowell. ed. 1727.

Purpurtuant. See Purpurtiant.
Purpurpance, See Purpurpance. As well before as after the conquest, the King, upon his ancient demesnes of the crown of England, had houses of husbandry, and flocks for the furnishing of necessary provisions for his household, and the tenants of those manors did by their tenures manure, tall, etc. and reap the corn on the King's demesnes, mowed his meadows, etc. repaired the fences, and performed all necessary things belonging to husbandry upon the King's demesnes: In respect of which services, and to the end they might apply the fame the better, they made them the title of their lands, that they should not be sold out of the court of that manor, nor imperilled of any jury or inquizz, nor appear at any other court, but only at the court of the said manor, nor be contributory to the expressions of the knights of the shire which served at parliament, nor pay any toll, etc. which liberties and immunities continue to this day, albeit the original cause thereof is ceased. 2 Lfg. 564. 543. cap. 2. Mr. Serjeant Haukins Pl. C. 114. cap. 47. sect. 1. fays, that this method being found to be troublesome and inconvenient, was by degrees difused, and afterwards the King used to appoint certain officers to buy in provision for his household, who were called purveyors, and claimed many privileges by the prerogative of the crown, which seem to have had the pre-emption of all such virtues as were bought by any to fall again.

The price to be paid, M. C. 9 h. 3. c. 19.

Wood not to be taken without licence, M. C. 9 h. 3. c. 21. Shall not make purveyance of willing or carriage, on pain of ranom, St. Wifjm. 1. Ed. 1. c. 1. 34 Ed. 3. c. 36 Ed. 3. c. 2 & 6.

Shall not be made for a cattle, but in the town where the cattle is, etc. St. Wifjm. 1. Ed. 1. c. 7.

The penalty of purveyors not paying when they have received the money, St. Wifjm. 1. Ed. 1. c. 32. 31 Ed. 3. c. 21. 28 Ed. 1. 3. c. 2. 4 Ed. 5. c. 3 & 4. 5 Ed. 5. c. 10. 13 Ed. 1. 3. c. 2. 7. 13 Ed. 1. 3. c. 10. 25 Ed. 3. 37. 5. 16.
Qua Quarantinum, The center of four ways, or where four roads meet and cross each other. By Stat. 8 & 9 Will. 3. c. 16. pofts with inscriptions are to be set up at such crossroads, as a guidance to travellers, &c.

Quarantiena terrae, A terrain, or so much ground as may be tilted with four horseth. Cowell, edit. 1727.

Quae eft oadem, In pleading is used to supply the want of a traverse. 2 Lilli. 405. In clausum friget such a day, the defendant pleads the plaintiff's licence to him on the face of the same, and that tuitum idae he entered; he need not go out of oadem, &c., for he does not directly answer the affidavit laid by the plaintiff; but where he justifies at another day, or at other place, then he ought to say, quae eft oadem. 21 Hen. 7. pl. 2. A fact laid to be Nou. 1, and a justification Nou. 2. quae eft oadem, is well enough without a traverse, the day not being material; but, it had been naught, if the day had been material. 1 Lev. 245. if a traverse is alleged to be 10 Nou. and justification the 11 Nou, and there be an averment of quae eft oadem, it is here held good without making any traverse. 5 Lutio. 1457.

Quaest. Quita phitra, Was a writ that lay where an inquisition had been made by an executor in any county, of such lands or tenements as any man died seized of, and all that was in his possession was imagined not to be found by the office: The form whereof is in Reg. Orig. fol. 293, and in F. N. B. fol. 255. It differs from the writ called initialis inquisitionem, according to the fame Fitzherbert, because this is granted where the executor formerly proceeded by virtue of his office; and the other where he found the first office by virtue of the writ named diem clausum extremum. The form fee in Reg. of Witts, fol. 293. and in Fiz. Nat. Brev. fol. 255. This writ is now made useless by taking away the court of wards and offices post mortem by Stat. 12 Car. 2. c. 24.

Quaestio, or querry, is where any point of law, or matter in debate is doubted; as not having sufficient authority to maintain it. See 2 Lilli. 406.

Quaestiones non inventum plegium, Is a return made by the sheriff upon a writ directed to him with this condition inferred, St. A. fecr. B. securum de clamore quae praedecesserat. F. B. fol. 28.

Quaestorii mariti, Were those who carried indulements from door to door, defiring charity either for themselves or others. Matth. Wiff. ann. 1240, tells us, that the King terram quan per papeles questionarios dependerunt. &c. permitted. 1 St. Leg. 4.

Quaestio, Is that which a man hath by purchase, or hereditas is what he hath by descent: * info in Glanville, lib. 7. c. 1. Aut habet hereditatem tantum, vel quantum tantum, aut hereditatem & quaestio.

Quæstiones, Penalty of their assembling under presence of religious worship, or refusal an oath, 1395 14 Car. 2. c. 2.

For the third day, was by an executor in any county, of the realm, or be transported, 1395 14 Car. 2. c. 2. 1, 2.

The toleration for the Quakers, 1 Wiff. & M. c. 18. f. 13.

Where disabled to vote for members of parliament, 7 & 8 Wiff. 3. c. 27. 6 Ann. c. 23. 2 G. 2. c. 24.

Their affirmation to be taken in civil causes, 7 & 8 Wiff. 3. c. 34. 1 G. 1. c. 6. extended to Aberfyrn, 22 G. 2. c. 30.

Penalty of false affirmation, 7 & 8 Wiff. 3. c. 34. f. 3. 8 G. 1. c. 6. f. 2. 22 G. 2. c. 46. f. 30.

Not permitted to give evidence in criminal cases, or to serve on juries, or bear offices of profit, 7 & 8 Wiff. 3. c. 34. f. 6.

Power given to the judges to levy their small tribes, 7 & 8 Wiff. 3. c. 34. f. 4. 22 G. 2. c. 46. f. 30.

May be admitted attorneys on taking their affirmation, 12 G. 2. c. 13. f. 8.

Affirmation of Quakers to be received where an oath is required by any act of parliament, 22 G. 2. c. 46. f. 32.
Quale ut, 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 ecclesiast, between judgment and execution to inquire whether the 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. Wifyn. 2. cap. 32. The form of this writ you have in Reg. Just. fol. 8, 16, 17 and 46. and in the Old Nat. Brev. fol. 101. &c.

Quam ut bene gesset, 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 by grant of the king, or by the consent of the whole, if ejection her, may the writ De quarentia habeatur, but the widow shall not have man, drink, &c. though for there be no provision in the house, the may kill thing for her provision. F. N. B. f. 161. See Magna Charta c. 7. Britton, b. 103. and Pitta, lib. 5. c. 13.

Quarentes. Is also the space of forty days, whereby any person, coming from foreign parts, invested with its plague, is not permitted to land, or come on shore, until so many days are expired. See Plague.

Quarentine. Likewise signifies a quantity of ground containing forty perches. Cowell, edit. 1727.

Quarentina balneata, Is a writ that lies for a widow to enjoin a husband, his brothers, or his personal representatives to engage in an innkeeper his goods, &c.

Quare ejecta infra terminum, Is a writ that lieth for a tenant in chief ejected from his term, or his lands cut out of his farm before his term be expired, against his former or lefser that ejected him. And it differs from the ejentio firmae, because this lies where the lefser, after the lease made, inchofeth another, who ejecteth the lessor: And the ejentio firmae lieth against any other flanger that ejected him. But the effect of both is all one, that is, to recover the residue of the term. F. N. B. fol. 197. Reg. Orig. fol. 237. and the New Book of Entries, verbo Quare ejecta infra terminum.

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 preferring a clerk thereto when the church is void: And it differs from the writ called a dareine prejentment, affilia utime presentacionis, because that lies where a man or his ancestors, formerly prefented; and this for him that is the purchaser himself. See the Ex- piffor of the Term of the Law. Old Nat. Brev. fol. 27. Bradl. lib. 4. tract. 2. cap. 6. Britton, c. 93. and F. N. B. fol. 109. and Here note, that where a man may have an affile of dareine prejentment, he may have a quare impedit, but not contrarywise. See Bradl. lib. 4. tract. 2. cap. 6. F. N. B. fol. 30. and Wifyn. 2. cap. 5.


Given of chapels, prebends, &c. Stat. Wifyn. 2. 13 Ed. 1. c. 5. f. 4.

Cafes in which penalty was payable against the crown, 14 Ed. 3. fol. 2. c. 4.

He who claims by a recovery, shall maintain a quare impedit on the firft avoidance, 7 H. 8. c. 5.

The writ to be had on the death of December and the 12th of March not reckoned in quare impedit, 1 W. & M. f. 4. c. 4.

A quare impedit may be maintained notwithstanding anufparation, 7 Ann. c. 18.


Quarum inchartabilit, Is a writ that lieth against the bishop, who within fix months after the vacation of a benefice, conferreth it upon his clerk, while two others are contesting in law, for the right of prejentment. And here most commonly lay his £pewardie of the pleas. Old Nat. Brev. fol. 90. F. N. B. fol. 48. and Reg. Orig. fol. 32. See 18 Fin. Abr. 129.

Quarum intrinse matrimonio non faciatur, Is a writ that lay for the lord against his tenant being his ward, who after convenable marriage offered him, mar-


The Queen Confort is an exempt person from the King's Common law, and is of ability and capacity to
inhabit and grant without the King; and it is capable of
being land or tenements of the gift of the King.

21. ii. 132. 2. See Bitt., 1.

Queen Dowager, No man may marry the Queen
Dowager without licence from the King, on pain of forfeiture
his lands and goods: But if the marry any of the
nobiliteit, or under that degree, the behest not her dignity;
the man of such a Queen may maintain an action of
writ of bench, 18, 50. The statute 25 Ed. 3. making it treason
to violate the Queen, extends not to Queen Dowagers,
but to the King's wife and companion: And a Queen
Confort and Queen Dowager shall be tried, in case of
reason, by the peers. 2. 24, 50.

Queen gold, (Aurum Regnum) is a royal duty or re
venue belonging to every Queen Confort, during her
marriage to the King of England, both by law, custom and
satisfaction, payable by sundry persons in England and
lands, (upon divers grants of the King) by way of fine
for violation, amounting to ten marks or upwards;
said, or full satisfaction above the inquisitions due to
for every hundred pounds fine, upon pardons,
contrasts or agreements; which becomes a real debt and
uty to the Queen, by the name of Aurum Regnum,
upon his party's bare agreement with the King for his fine,
and recording it, without any promise or contract for
his tenth part exceeding it. Lit. Sosc. pag. 43.
Colb. 12, Reg. 41, 21, and Pynson's Proleg on his subject.
Per vio.

Nue estate, Translated verba, signifies quæ Stella
: In our Common law it is a plea, whereby a man
mitting another to land, &c. that, the same estate
had, he had him or other conveyance,— 
the plaintiff alleges, that such persons were
of lands whereunto the advowson in question was
appendant in fee, and did present to the church, and
afterward the church became void, quæ estate del. &c. that
which estate of the four persons he now has during the
vacation, by virtue whereof he pretended, &c. Bro. tit.
2, 1, 176. &c. 11, 4. 21, 121. See
Vin. Abr. fe. 132—140.

Nue ecad. See Nue ecadum. See Nue ecadem.

Nue et melius, Signifies verba, which is the same
thing, but is used in a legal sense as a word of art in an
action of tresspass, or such like, for a positive justification
of the suit of the plaintiff by the defendant as a wrong.
For example, In an action upon the case, the plaintiff
says, that the lord threatened his tenants at will in such
court, that he forced them to give up their
property. The lord for his defence pleaded that he did unto them, that
if they would not depart, he would sue them at law:
the plaintiff, in the course of the case, to give
affirmatively; que est melius, the defence is good. Of
this see Kitchin, cap. 2. que est melius, fe. 276.

Nue reddimus resedit. Is a writ judicial that lies
for him, to whom a rent-reeve or rent-chargé is granted,
by fine levied in the King's court against the tenant of
the land, to which it is given to act, and to obtain

Nuecles, An action preferred in any court of justice.
in which the plaintiff was queres or complainant, and
his brief, complaint or declaration, was queres, wherein
our guarded against his discovery. Quietes effe a quæperi was
to be exempted from the customary fees paid to the
King or lord of a court, for the purchase of liberty to
such an action. But more usually to be exempted from
fines and amercements, impounded for common tre<br>trespasses; so in Henry III. So in Henry III.

Terræ fuisse quæ quiesse de omnibus placiti & purgati,
123. See Kenney's Glossary.

Nuecles resonante &c....difficultia &c...terminate, is a writ
whereby one is called to justify a complaint of trespasses made to the
King himself, before the King and his council, and what the Lord
Dookes, Prang. cap. 2, fol. 10, and Coke. lit. 4, Cos
capit. Cafis. fol. 23, 6. The Queen Confort is an exempt person from the
King

Nuecles transfere fortasse. See Fifth force.

Nuecle (Quoja) A quiet or inquiet. Inquisition or
inquiry upon the oaths of an imparloured jury. Cawd.,
edit. 1747.
sententious or Sententious, (Decima quinta) is a
Figurative or the word signifying for the purpose of
This is a tax, is a tax, the preceding, and is a tax
or the prosecution, is used as the foating and
this, it is a tax of a rate after the fifteenth part
of men's lands or goods. Ano 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. Sometimes this word Quin-
stream. It is used for the fifteenth day after any
result, as the fifteenth 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 of
the goods only, and it was first granted by the par-
liament 15 Ed. 1, c. 16. Comptes royaux diciue decim
Reges, qui regnent, parvis, pecunia, co-
num aliquam, de Regno, de omnibus host
us milibus confess. The city of London paid this year
for the fifteenth, 2860l. 1s. 8d. and the abbot of St.
Edwards 660l. 13s. 4d. which was by comprisions
and thereupon had all his temporal goods, and the good,
of his own discharge of the fifteenth. The way of
collecting it was, by two allches appointed in every
county by the King; and they appointed twelve in every
hundred, who made a true valuation of every man's
personal estate, and then caufed the fifteenth part to be lev-
ecd. Cowell, edit. 1727.
Smutial, (Quintana.) A weight of lead, iron and
other commodities, 150 pounds, at fixdore cent.
Cowell, edit. 1727.
Smuttane. (Quintana) Was a Roman military
squad or exercise, by 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
nail, in his left hand having a shield, and in his
right hand a wooden sword, the whole made to turn
round, so that if it was fluck with the lance in any
other part but full in the breast, it turned with the force
of the stroke, and fluck the horfemans with the sword
which it held in its right hand: This sport is recorded
Quinto rent. (Quinto rentibus, mentioned in flat.
31 Edw. cap. 3.) Is the last call of a defendant, who is
being pressed by the outlawry, where, if he appear not, he is
the judgment of the coroners returned outlawed; if a
woman, divorced. See Criminating, Balleting.
 Dissent. An omission of the time in which an
exhibition against any peer on a penal statute, at the suit of the
King and the party who is the informer, where the penalty for
breach of the statute is to be divided between them; and the
party informer prosecutes for the King and himself.
Finch 392. See Information, Anton.
Quittation. See Quitting.
Quittel, (Quittelum) A release or acquit-
ting of a man, for any action that he hath or might,
or may have against him. Also a quitting of one's claim
er title. Basil. lib. 5. tract. 5. c. 9. num. 6. lib. 4.
tract. 6. c. 13. num. 1.
Quittent, (Quittens relictus) Is a certain small rent
payable yearly, by the tenants of moats masons,
upon the payment whereof they are quit, and free, till it
becomes due again: This in some ancient records, accord-
ing to Spelman, is written White-rent, because paid in
florin. 2 flot. 10.
Quod licet. Is often used in law pleadings and
arguments to signify, as to the thing named the law is fit.
Et dicet beneficiari de cancellariis, Is a writ to
exempt a clerk of the Chancery from the contribution
of the proctors of the clergy in parliament. Reg.
Orig. fol. 261.
Quod licet non juri de certo. Is a writ to a clerk,
which, by reason of some
hath been, is made, or about to be made bailiff, bea-
dee, retor, or some such like officer. See Clericor infra
Quod licet nescit. Is a writ that lies for the tenant
in tail, tenant in dower, or tenant for term of life, hav-
ing left by default, against him that recovered, or against
his heir. See Brisco, hoc tit. Reg. Orig. fol. 171. See
16 Fin. Ab. 145—146.
Quod pro debeat. Is a writ that lies for the heir o
him that was defiiled of his common of privilege against
the heir of the defiler being dead. Termes de la
516. Britus, c. 8. says that this writ lies for him, who
ancestors died tested of common of privilege, or other like
thing annexed to his inheritance, against the defend
150.
Quod persona nec prorabuntur, 3r. Is a writ that
lies for spiritual persons that are disfrained in their spiritu-
al possessions, for the payment of a fiftteenth with the
feft of the parith. F. N. B. fol. 176.
Quo fidd., for, is a writ lies for him that has land
wherein another challengeth common of privilege times
of mind: And is to compel him to pay the whole tithe
he challenges it. F. N. B. fol. 128. and Britus mention
largely c. 59. Reg. Orig. fol. 156.
Quod minus. Is a writ that lies for him that hath a
grant of house-bene, and hoy late in another man's woods
against the grantor, making hath walshe as the grantee
cannot enjoy his grant. Old Nat. Brev. fol. 148. as
Religion. fol. 178. This writ lies also for the King's for-
er in the Exchequer, against him to whom he sold
any thing by way of bargain touching his farm, or against
him with any cause of personal action. Perkin Grants,
m. 4. For he is bound by the vueson's discretion to pay
any due to him, he is made liable to pay the King's
rent. And under this pretence, any one who pays the
King a fee-farm rent, may have this writ against an
other person, for any debt or damage, and bring them
to trial in the Exchequer. Cowel, edit. 1727.
Quojun. Is a word often mentioned in our statutes
and much used in commissions both of justices of the peace
and others, and so called from the words in the com-
mission, Quorum A.B. numi iis, volume: As for exam-
ple, where a commission is directed to seven persons, c.
any of three of them, either of A. B. and C. D. or the
two, there A. B. and C. D. are liable to be of the quorum
because the three cannot proceed without them; or a jufh
of the peace and quorum, is one, without whom the re-
of the justices in some cases cannot proceed. Stat. 3H.
3. c. 2 and 28 H. 8. c. 1
Quo warranto is a writ by which to proceed to be levied in an
equal manner. Min. Arg. 538.
Quo warranto, Is a writ that lies against him that
ufurps any franchise or liberty against the King, as to
have with, &c., as to being held in common, &c., by the
like, without good title. Old Nat. Brev. fol. 149.
Or else against him that intrudes himself as heir into land.
Brown, lib. 4, tract. 1. c. 2, num. 3. Bros. hoc tit.
Directly proceeding on the writ for enjoying lib-
erties, and the writ of Quo warranto, before the King
in and by the Stat. 3 Quo war. 6 Edw. 1.
Pleas of Quo warranto shall be heard and determined
before the justices in Eyre, Stat. 3 Quo war. 18 Edw.
19 flot. 2. Liberties before R. 1, confirmed, and those who
have old charters of franchises shall have the same adjudged ac-
ting to the tenor of them, Stat. 3 Quo war. 18 Edw.
19 flot. 3.
Judgment of ouster may be given on informations
in nature of Quo warranto, 9 Ann. c. 7, sect. 5.
Statutes of jeoffails extended to proceedings in Quo
warranto, 9 Ann. cap. 20, sect. 7. See Information,
Pleas.
RANGE. (Rahemutum, or Rahentam, from the French, racherer, to redeem.) It is the same thing with theft-late, which is the compensation or redemption of a thing. 

Rashdumi, Judges. Leg. Canuti, cap. 103.

Rath, (Féatulâ, So called, because people are there terrorized at times invisiuu.) An engine in the Tower, for a long time used for extracting expropriation from delinquents: 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 break, allowed in many cafes by the Civil law; and thereupon it was called the Duke of Exeter's daughter. 3 Inst. 35.

Rashdiet, is the full yearly value of the land by lease, payable by tenant for life or years, &c. Wood's Int. 165.

Rath, (Rathwen.) 1727.

Rathdin, (mentioned in flan. 32 Hen. 8, c. 14.) In a second voyage, or voyage, for wines made by our merchants into France, &c. not racked wines, cleanfed and drawn from the lees.

Saxon charters. In Domuslau-bok, see Liber bominum.

Rathbun, is mentioned in Fleta, lib. 2, cap. 73, par. 32, and it signifies a turrow.

Ratman, (mentioned in Donemay-bok, tit. Heretice 15.) seems to be the same with radechкие, unless it be derived from read counsel, and so readman signifies counsellor.

Ratman, edit. 1727.

Ratpeter, a flateau to called of justices, aligned in Edward III. and his council, to go a circuit through all England, and to hear and determine all complaints of injustice done within five years next before Michaelmas, in the fourth year of his reign. Cawell, ed. 1727.

Ratcliff, 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 Honor, pag. 597. — Cum forjits, porci, chafis, bofis, aurentis, hundritis, canciles, raglistis, ringlistis, wunderd, englafalbriis, balibre, &c. Davie in his Dictionary says, that blanche is among the words signifies fensibilitate, farcissement, prodigalitate.

Ratcliff, a steward. Selden, tit. of Honor, fol. 597. Cum hundratis, commatiis, raglistis, scorclaliis, &c.

Ragnam's tell, (more properly Ragnam's tell.) So called from one Ragnam, a legate in Scotland, who called before him all the beneficed 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 tell, among other records, being taken from the Scotts by our King Edward I. was re-delivered to them in the beginning of Edward the Third's time. See Richard Baker, in his Chronicles, I. 127. It is the faith, that Edward III. surrendered, by his charter, all his title of sovereignty to the kingdom of Scotland, released divers debts and instrumentments of their former homage and fealties, with the famous Seigneur named Ragnam's tell. Cawell, edit. 1727.

Rage, Old rage may be imported duty free, 11 Gen. 1. c. 10.

Rape, See Partus.

Ravine, See Rape-waves.

Rapilla, Lopping and topping, or the branches, boughs or leaves of trees, cut off or blown down. Cawell, edit. 1727.

Rap, From a Saxon word, and signifies operatio rapina, open or plustet. L. Amb. Archi, f. 129, defines it thus, Ran dixtit operatio rapina, que regni non potest. In the Saxon law,

Rape, From the French rape, to order, dispose of. It is used in the Forset Law, both as a verb, as to range, and a substantiv as to make range. Charta de Forella, cap. 6. To range also signifies to wander and live about.

Ranger, is a sworn officer of the forest, of which there are twelve. Id. cap. 7. whose authority is in part derived by his oath fet down by Alaniwood, part 1, pag. 50. but more particularly part 2, cap. 26. nam. 15, 16, 17. His office chiefly consists in three points, To walk daily thro' his charge, to see, hear and inquire, as well of trespasses as trepassers 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 trespasses of the forest at the next court held for the forest. This office is made by the King or the Crown, and hath a fee of twenty or thirty pounds paid yearly out of the Exchequer, and certaine fee-deer. Rangement Forstle du Whiteland. Pat. 14 R. 2. m. 3.

Ransome, (From the French rancon, redempitio) 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 flatus of 1 Hen. 4. cap. 7. 11 Hen. 6. 11 and 23 Hen. 8. cap. 3. where fine and rancon are joined together: But here note, that when one is to make a fine and ransom, the rancon shall be treble to the fine. Cump. Jufi, of Peace, fol. 142. and Lamb. Ext. l. 4. c. 160. Pag. 556. It thus appears, that there is a difference between amerciament and ransom, that ransom is the redemption of a corporal punishment due by law to any offence. Lib. 3. cap. De Amerciament taxable. See Co. on Lit. fol. 177.

A ship was taken by the French; the matter (having a flare in her) ranconed her for 1800 l. and was taken to France as an hostage for this money. And by Lord Chancellor, The rancon money must be railed out of the profits, notwithstanding any former mortgage of the ship; for if there had been a precedent mortgage, what would become of that security, if the ship had not been redeemed by the Crown as ordered, the performer her intended voyage, and the freight money received after redemption was the first profits arising, and out of them the rancon money is to be satisfied; the inferiors always pay a part of the rancon money. East 5 Ann. Hays v. Winter, MS. Rep. 2. Eq. Abr. 692.

Rape, (Raps and Rapses.) In a part of county, being in a manner the same with a hundred, and sometimes contains in it more hundreds than one. As all Suffix is divided into six Rapes only, viz. of Gledsfield, Arundel, Brember, Leuce, Pevensey and Hayling; every of which, besides their hundreds, hath a castle, river and forest, belonging to it. Camb. Brit. pag. 255. and 229. These in other countries are called hundreds, parishes, and townships. Smith de Rep. Ang. lib. 5. c. 16.

Rape of the forset. (Ratus forstis.) is reckoned a manifold most crimes, whose cognizance belongs only to the King. Violentius cognoveris, rapit forstis, re capietur horam foris, Leg. Hen. 1. c. 10. Trespass committed in the forset by violence.

Rape of woman, (Rapis) is a felony committed by a man, in the violent deflouring of a woman against her will, be the old or young. Britton, cap. 2, Whynn. Synod. part. 2. tit. Indictments, f. 54. hath these words, The copulation with a woman is 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
R A P

R A P

before the fact or after. And this in Scotland ought to be
complained of the same day or night that the crime is
committed. 

R A P

Stane de verbis, viginti verbis, rapitis, and his
reason is, quia lapsi dixit esse crimina praefpector.

R A P

This offence is felony both in the principal and his aider,
13 R. 2. 2 Stat. 2. c. 11 Tit. 4. c. 13. 1 Edw. 4. c. 1.
and Wilm. 2. c. 13, and thereupon punished the benefi-

R A P

cit. in 18 Eliz. c. 7, and Pleta says, the crime must be made
within forty days, or else the woman may not be heard, ib. 3. c. 5. sect. Praetereat.

R A P

And carnal knowledge of a woman under ten years old
is felony. 8 El. 6. Of the diversity of rapes, see Conv. 79.

R A P

Judgment. 169. 43. 1. The offender is called raper, and

R A P

ravisher, in Bratton's time was punished with the

R A P

loaf of his eyes and fiones, Qua calumni rapiri

R A P

incurarent. 3 Inf. fol. 60. The Civil law useth rapitis

R A P

in the same signification; and raperae contemptum, et

R A P


R A P

Rape is when a man has carnal knowledge of a woman

R A P

by force and against her will; and raperae, signifies as

R A P

much as carnaliter signifies; and cannot be

R A P

expressed in legal proceedings by other words. 2 Inf. 180.

R A P

Ca. Lit. 123. b. 124. 4. And this there be emittis feminis,

R A P

yet if there be no penetration, viz. rea in re, it is no

R A P

rape; for the words of the indictment are, carnaliter et

R A P

vulgari significatione. 2 Heng.

R A P

In this state of things, it must proceed to some degree of penetration to make it

R A P

amount to a rape, but that it is said however, that emittis

R A P

in prima facie evidence of penetration.

R A P

By stat. 1 Ed. c. 13. The King prohibity every per-

R A P

tson to ravish, or take away by force, any maid within age,

R A P

albeit, a virgin, or any woman of full age,

R A P

or any other woman against her will; and if any one

R A P

will force such offenders within 40 days, the King will do

R A P

dom comon right; but if none sue within 40 days, the

R A P

King will sue, and the offender, being convicted, shall

R A P

futter two years imprisonment, and be fined at the King's

R A P

pleasure; and if not able to pay his fine, shall forfeit his

R A P

liberty according to his value.

R A P

Rape was felony at Common law, for which the

R A P

offender was to forfeit death; but before this act the offence

R A P

was made left, and the punishment changed, viz. from
dead to the loss of his members whereby he offended, viz. his eyes and his testicles; so that at making this act, it was not felony. And in three days, if the of-

R A P

fender, in the appeal brought by her that was ravished,

R A P

had been condemned by the country, he shou'd without

R A P

any redemption lose his eyes and his privy members, un-

R A P

less he that was ravished demanded him for her husband

R A P

before judgment, and which was only in the will of the

R A P

woman, to be set free. And if punishment of loss of members continued till the making of this act, which was on purpose to make it punishable by fine and

R A P

imprisonment at the suit of the King, unless the he should

R A P

purse her remedy within 40 days mentioned in the act.

R A P

2 Inf. 180. 181.

R A P

Stat. 15 Eliz. c. 34. enacts, That if one ravish a married

R A P

woman, a maid, or other, who does not consent neither

R A P

before nor after, he shall have judgment of life and mem-

R A P

ber. And if a man ravish a married woman, lady,
damocel, or other, although the consent after, he shall

R A P

have like judgment, if attained at the King's suit, and the

R A P

King shall have the suit. See Appeal of Rape.

R A P

W. D. was indicted for the rape of a girl of seven years old

R A P

and no more; setting forth good pleas felonie repart

R A P

et caeleps, Knapc and that where any woman shall be ravished, and afterwards consent to the ravisher, both

R A P

the ravisher and ravished shall be debased to have or

R A P

challenge any inheritance, dower or joint feoffment after

R A P

the death of their husbands or ancestors, and the next of

R A P

blood respectively shall have title immediately after the

R A P

rape, to inherit their lands of inheritance, and ravisher

R A P

and the husband of such woman, if he have any, and

R A P

if no husband, the father or next blood have the suit

R A P

against such offender.

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R A P

if no husband, the father or next blood have the suit

R A P

against such offender.
RAT

(very muchly and improperly to be punished with death: But it must be remembered, that it is an accusation easily to be proved and lawful to be defended by the party accused, though never so innocent; Therefore a wise jury will be cautious upon trials of offences of this nature, that they be not so much transported with indignation at the herniabellsi of the offence, as to be over hastily carried to the conviction of the persons accused, especially, by the confident refrainers, sometimes of malicious and false witnesses. 1 Hale's P. C. 633, 635.

Mr. Sejan's Hawkes, says all who are present, and actually affit a man to commit a rape, may be indicted as principal offenders, whether they be men or women. 2 H. & C. 765.

Harpers. To what duties liable on importation; 2 Will. & M. 2. c. 4. st. 31.

Kape Unceptr. See Uncenat.

Rapin. (Rapin.) To take a thing in private against the owner's will, is properly theft; but to take it openly, or by violence, is rape. 14 Car. 2. cap. 22. and 18 Car. 2. cap. 3.

Rapin hardecis. Is a writ lying for the taking away of an heir being in joint; of which there are two sorts, one when the heir is married, the other when he is not; of both these, see the Reg. Orig. fol. 165.

Kale. (Rapine) See Rapin. If a party take away corn, he shall be taken by the rate, and not by the hoop or cart. Ordinance for bakers, brewers, &c. c. 4.

Kaffeal. Was an eminent and learned lawyer, that lived in Queen Mary's days, and was a Justice of the Common Pleas; he made an abrasment of the statutes, which bears his name to this day. He was also the author of the New Book of Estates. Cowell, edit.

Nature of a deed, so as to alter it in a material part, without consent of the party bound by it, &c. will make the same void, and if it be rated in the deed, after the delivery, it is said to go through the whole. 5 Rep. 23, 119.

Rapine, &c. is most villainous, when it is piracy, that is, but one part of the deed, and it makes to the advantage of him to whom made. And where a deed by rafure, addition or alteration becomes no deed, the defendant may plead non est factum or it. Ibid.

Kate. A valuation of every man's estate, or the appraising and setting down how much every one shall pay, or be charged with to any tax. Stat. 43 Ed. 2.

Kattellce. Is when sheep or other cattle are kept in a parish for less time than a year, the owner must pay for pro rata, according to the custom of the place. P. N. B. fol. 51. Broke, Dljfms. 1. 152. For Pro rata, found. Talfrey, Lyndw.

Naturalization. (Ratification) A ratifying or confirming. It is used for the confirmation of a clerk in a prebend, &c. formerly given by the bishop, &c. where the right of patronage is doubted to be in the King. See Reg. Orig. fol. 304.

Rapport. Properly signifies reason; but we take it mostly for an account, as reddere rationem, to give an account, and it is frequently used.

Ratification. Confirmation, agreement, consent. 18 Viz. Ad. 156.

Ratto. A cause, or judgment given in a cause, and which is reducible to an account, is to cite one to appear in judgment. 16 Will. 395. 8 Will.

Ratificationibus dictis. Is a writ that lies where two lords, in divers towns, have fœniciones joining together, for him that findeth his wafe by little and little to have been encroached upon, against the other that hath encroached, thereby to reduce their bounds which rest in a narrow manner a sort of right. The Old Nat. Bro. says, That this is a kind of Jujtaeatis, and may be removed by a joue out of the county to the Common Bench. See the form and use hereof in P. N. B. fol. 125, and Reg. Orig. fol. 157. The Citizens called Fideherb credimur rem redacti.

Rationaliti parte bannae. Is a writ that lies for the wife against the executors of her husband denying her Vol. II. No. 119.

the third part of her husband's goods, after debts and su-
fder charges defrayed. P. N. B. fol. 122, who there
chites the eighteenth of Almerge Hazard, and Glan-
ville, to prove that, according to the Common law of
England, the goods of the deceased, his debts it paid,
should be divided into three parts, whereof his wife
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. 140. See 12 Viz. Ad. 158.

Ratification. Was the same with folium: It was worn
by the high priests of the old law, as a sign of the
greatest peregrination, and by the pope and bishops as a token of
the highest virtue, qua gratia & ratione perfectis, and
from hence it's called rational.

Ratificationibus dictis. Is a writ that lies for the
guardian by knights-service, or in feuage, against him
that took from him the body of his ward. See F. N. B.
f. 140, and 18. 12 Car. 2. cap. 24.

Ratificat. See Sts.

Ratificat. See Sts.

Ray. Is a word associated to clothe never coloured or died. Stat. 17 R. 2. cap. 3. 11 H. 4. cap. 6, and 1 R. 5. cap. 8.

Ratification, (Ratifi) Is where a forebear had been dispossessed, and again made fast, as the feac of Deane, by the statute of 20 Car. 2. cap. 3.

Reaply, Is an abstract of real, and contradistinguished
from personaly.

Reaptowell. Rip-towell. The gratuity or reward given
to customary tenants, when they have repaid their lord's
corn, or done their other customary duties. Cowell, ed.

Reason. It has been observed, is the very life of the
law; and that which 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, 153. If maxims of law admit of
any differences, there are to be preferred which carry
with them the more perfect and excellent reason.

Reasonable ad. (Ratimabili axiwm) Was a duty
that the lord of the fee claimed of his tenants holding by
knights-service, or in feosage, to marry his daughters,
or make his a monk a knight. Wolf. 395. 1. cap. 39, but now taken away. See the fl. 12 Car. 2. c. 24.

Reattachment (Reattachment) Is a second at-
tachment of him that was formerly attached and disad-
sept the court without day, as by the not coming of the
judges, or some such cavarly. Broke, fee titulus, where he makes re-attachment general and special: General is where a man is re-attached for his appearance upon all
writs of affix lying against him. Brod. bid. nam. 18. Then special must be for one or more cases. Reg. Juv.
dis. fol. 35. A cause discontinued, or put length, cannot be revived without re-attachment or re-furn-
moms; if they are special, may revive the whole
proceedings; but if general, the original record only.

Rebels. (Rebells) Signifies the taking up of arms
traitorsly against the King, be it by natural subjects,
or by others once subdued: Among the Romans it deno-
ted a second rebuff of such as formerly being over-
come in battle, yielded to their subjedion. The word
rebels it formerly contributed to him that willfully breaks
Sometimes to a villain disbeliefing his Lord. 2 R. 2.
cap. 6.

Rebellious assembly. Is a gathering together of 12
persons, or more, intending or going about, practising
or putting in use, unlawfully of their own authority, to
change any laws or statutes of the realm; or to destroy
the inclusion of any park or ground inclosed, or banks
7 G

of
Received-General of the court of Wards andIncre- 
verries, Was an officer belonging to that court; but 
the court being taken away by the Stat. 13 Geo. 2. cap. 24. 
the benefit of that officer is also taken away.

Received-General of the mudder-rolls, Is men- 
tioned in Stat. 35 Eliz. cap. 4.

Receivers general of the revenue. What the 
King's rents and tenuts shall take for ac- 
quittances, 33 H. 8. c. 39. f. 65.

Henry not chargeable but for lands by declarant, 34 &
35 H. 8. c. 2.

Heirs may have debt against executors or admini- 
strators of seizers, 33 & 35 H. 8. c. 2.

Officers accountant to the crown shall find au- 
fers, and make their accounts duly, 7 Ed. 6. c. 1.

King's receivers may diltrain for rent, 7 Ed. 6. c. 1.

f. 11.

Lands of accountants to the crown liable, 13 Edw. 
c. 4. f. 1. Exception as to bilphos, ibid. f. 9.

Lands fraudulently purchased made liable to arrear- 
gs, 13 Eliz. c. 4. f. 5. 4.

Office, no fraudulent conveyances traversable, 13 
Eliz. c. 4. f. 14.

Lands of under-collectors of the tithes made liable, 
14 Eliz. c. 7.

Accountant's lands may be sold after his death, 27 Ed. 
c. 5. f. 11.

Not to be sold during infancy of heirs, 27 Ed. c. 3.

f. 7.

Receivers to pay 12 per Cent in case they neglect 
acount for two months, 20 Geo. 2. c. 2.

The treasury impowered to make allowances to receiv- 
ers, 3 Geo. 1. c. 8. 7 Geo. 1. c. 30. f. 36.

Briefs, (Recitation) Is the rehearal or making 
mention in a deed or writing of something which has 
been done before, 2 Litt. Atr. 416. A recital is not con- 
clusive, because it is no direct afitimation; and by feign- 
ments in a true deed, men may make what titles they 
pleased, since false recitale are not puniable, 1 Itull. 352.

If a person to have been in feign of felony, 
abate him, and permit him to escape, without 
(Right to) 

giving him any advice, assistance or encouragement, it 
is a high misdemeanare, but no capital ofence; and a wife, 
in regard to the duty and love which she owes her hus- 
bond, may receive him when he hath committed felony; but 
in other relation, no excerpt of a felon can be forgiven.

S. P. 41. H. P. C. 218, 219. 2 Harley, P. C. 123, 319, 320. By statute, if any 
person shall receive or buy knowingly any felon goods, 
or conceal felons knowing of the felony, he shall be ac-
cellary to the felony, and suffer death as a felon. Stat.
5 Ann. c. 31. Such receivers, &c. may be transported, 
by 2 Geo. 1. c. 1. See Felony, Larceny.

Reciever, Annexed to other records, as Receiver of 
records, signifies an officer belonging to the King, or other 

Receivers of the fees, Is an officer, who receives 
the money of all such a compound with the King upon 
original suits in Chancery. Itt. Symbol. part 2. tit. 
Fees, sect. 16.

Receivers-General of the Dutchy of Lancaster, 
is an officer belonging to the Dutchy court, that gathers in 
all the rents and fines of the lands of the said 
Dutchy, and of all forfeitures and sequestrums, or what 
it is there received. Stat. 39 Eliz. cap. 7;
Recognizance, (Recognizer) Is a word frequently used for the jury impanneled upon an affi for the reason why they are so called, is, because they acknowledge a dif-
fic平s by their verdict. Britton, lib. 5, tit. 2, c. 9, num. 2 & lib. 3, tit. 1 c. 11, num. 16.

A Recognizance I am told is a bond writ out upon a recognizant when it is confecrated again, after it hath been polluted, or in the pofッション of Pagans or Hereickis. Matt. 27, anno 1152.

Records. (Recordum, from the Latin recordum, to.re-
member) signifies an authentic and uncontrovertible tel-
mony in writing, contained in rolls of parchment, and preferred in courts of record, and they are said to be Fel-
tyrollis & veritas supfia Gal's Preface to his 8 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 in-
rolled, it is a record, and of that credit that admits of no alteration or proof to the contrary. Bro. tit. Record, num. 20, 22, yet fee Ca. 4. Recol's cafe, fol. 52.

The King may make a court of record by his grant, and to it shall be committed the writing of 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 in-
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and as because, all microscop. And (as.

is exemplified judgment county, any being an inferior moveable mainders very the real man posed if the brought.

is, brought for the land of which a is appointed, ev. to cut off the estates above described. But 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, if he dot it me, to recover in value, that is, to recover to much recovery as the land is sold for, and much other lands by way of exchange. F. N. N. p. 134. Council.

A recovery in a large fence is a restitution to a former right by solemn judgment; and judgments, whether obtained after a real offence made by the tenant to the landlord, or after a false one pronounced upon his defect, or of the land in question: this was the notice of the Common law, and from hence men took an opportunity of making use of the elections of the court to their own ad- vantage, and to the prejudice of others, who though some cases strangers to the action, yet were interested in the land for which it was brought. 2 Leg. 75. 470.

For whilte these recoveries were governed by the first rules of the Common law, particular tenants, as tenants in dower, courtesly, in tail after provability of issue extant, and for life only; all those who had made lease of the land in dower, and for life, or to the heirs of the land of the assize of the lord mayor and aldermen; and attains the business of the city on any warning by the Lord mayor, Mayor.

true recovery, and a feigned one. 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 immovable, and have a verdict or judgment for him. A feigned recovery is (as the Civilians call it) Quadrum folio partis, a certain form or course for doing wrong, or whereof, or to the tenant or lands or tenements unto us: And the end and effect thereof is (according to Woods, Symbol. part 2. tit. Recov- eries, lib. 1.) to disprove and destroy effeats-tail, remainders and revenues, and to bar the intsails thereof. And in this formality are required three persons, wan- the demanding, tenant and vouch; The demanding is he that brings the writ of entry, and may be termed the recover. The tenant is he against whom the writ is brought, and may be termed the recoveror. The vouch or is he whom the tenant voucheth, and calls to warranty for the land in demand. A recovery with double tenant is, where the tenant voucheth to another, on the one vouchet. And a recovery with treble vouch is, where there are vouch. Bar to explain this point a little more: A man that is defirous to cut off an estate-tail in lands or tenements, to the end to fell, give or devile it, confiscat a feigned writ of entry for diffinition en le paff, to be brought for the lands of which he intends to cut off the intail, and in a feigned count or declaration thereupon made, pretend he was defirous of it, who by a feigned fine or deed of bargain and sale is named and sup- posed to be the tenant of the land. This feigned tenant, if it be a single recovery, is made to appear and vouch the bounty or bounty of the Coffee hereon, or the cover in the Common Places (for there only can such recoveries be feigned) who makes default. Whereupon the land is recovered by him that brought the writ, and a judgment is by such fiction of law enteret, that the dammainant shall recover, and has a sort of right for the possess of the lands demanded, and that the tenant shall recover the value of the lands against the lands of the landlord. This feigned recovery is also called a common recovery, because it is made by common consent. Now another time for any error signified or to be allegit in the said record, procefs, writ, warrant of attorneys, panel or return, in any letter, word, clause or matter of the same varying or contrary to the fact examinution and the inrollment, there shall be no judgment of the said records and procefss recovereth, nor affirmed.
time of the recovery, for the foeman of the tenant
was a dillinuc to A, and him in reversion; and the
flate makes recoveries of tenants in life for pofterity,
not 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 life to another, and the bargains suffered a
recovery, and vouched the bargainer, this was a void re-
covery, and a forfeiture within the 32 H. S. for though
the bargain and sale was of the inheritance, yet it paft
only an eftate for life of the bargainer, which was the
geatest and most advantageous part of the estate, and
consequendy the foeman was not deified; and therefore, the
bargainer being a legal tenant for life in pofterity, the
recovery against him, though with a voucher of the
bargainer, was void within that act against him in reversion,
whole reversion was not turned to a right as in the for-
mer acts once different. 1 Co. 15. Pelsan's cafe.
Law. 123. S. 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 where-
of which he is feized, or against any other with voucher
over of him, to be void, as against the recoverors and thei
heirs.
These flates made no provision for recoveries or re-
mainders expectant on efates-tail; and therefore if there
be tenant for life, remainder in tail, remainder in fee,
and the tenant for life suffers a recovery, and vouche-
s for remainder in tail, and the remainder in fee, the
common voucher; this is so far from being a void recovery
within those flates, that the recovery in fee is actually bar-
red by it; for the intended recompence, which the re-
mainder-man in tail is to have against the common
voucher, is to go in fequestration, as the eftate-tail would
be enfranchised, and it cannot be a convous recovery within the
act, because the remainder in tail joined in it, who may at
any time suffer such a recovery to destroy the remain-
der in fee. 10 Co. 39. b. 45. Jeunin's cafe. Co. Lit.
362. a. 3 Co. 60. b. Cr. Ellis. 562. Wifeman v. Crew.
Mor 690. Cr. Ellis. 570.
These common recoveries were no sooner allowed of
by the judges to bar eftates-tail, but men began to
improve them in a common way of conveyance, and to
declare ufs upon them, as upon fines and feoffments.
Hence it is, that the flates, which provide against any
alienations or discontinuances of particular tenants, pro-
vides the same thing against their recoveries; thus IT.
l. 7. c. 20. declares all recoveries, as well as other dis-
continuances by fine or feoffment 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 de-
crued by 12 H. 1. se 28. 29. as the flate says, suffered or done by the husband; for this,
like a feoffment by baron and feme in fullblace, is the
act of the baron only; and fo within the flate, but a
common recovery suffered by a feme covert, where her
husband joins with her, is good to bar her and her heirs.
Dass. and Stoup. 54. Co. Lit. 326. a. 6 Co. 73. 2
Inf. 345. 2 Rol. Abt. 205. 10 Co. 45.
1. Who may suffer a recovery; and of what things a
recovery may be suffered, and by what names.
2. What eftates and interefls may be barred by a com-
mon recovery; and of finge and double voucher.
3. Of erroneous and void recoverors, 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 act 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
Vol. II. N. 119.
transferred the land by livery, or any other act in pari;
and therefore if an infant suffers a recovery, he may re-
verse it, as he may a fite 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 perfon; but now the diffusion turns on this point,
that if an infant be involved in a recovery of his own
convenience, and he may reverse 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 inscription
of the court, for at his full age it becomes obligatory
and unavoidable; and as the party 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, or
when lands of equal value have been let on him, and
these recoveries cannot be annulled, the court, with 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 buffet 256. 2 Rol. Abt. 395. Co. Lit. 381. b. 10 Co.
1 Rol. Atr. 731. 7. 1 Std. 321. 372. 1 Law. 1432.
307. 5 Med. 209. Mis 10 Co. 43. and 2 Rol. Abt.
395. cont. See 2 Salt. 657. Where J. S. being of the
age of nineteen years, his ficher who was next in re-
covery, having been married without his ftroup of law,
and he petitioned the King for leave to fuffer a recovery,
who referred it to the judges of the Common Pleas,
before whom several precedents of recoveries suffered
by infants on Privy feals were produced; but the judges ob-
erving, that most of them were on the petitions of their
fathers on their heirs, and the marriage and an equal recov-
ery given, and that there was no fuch consideration in
this cafe, refused; but for this fee the above authori-
ties, and 1 Vern. 661.
If an infant suffers a recovery, and appears by at-
orney, it frames he may reverse 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. Sid. 321. 1
Lev. 142. 2.
A recovery, as well as a fine by a feme covert, is
good to bar heir; because the practive in the recovery
covers the writ of covenant in the fine to bring her into
court, where the examination of the judges destroys the
premption of law, that this is done by the coercion of
her husband, for then 'tis premuted they would have re-
fered her. 10 Co. 45. a. 2 Rol. Atr. 395.
Recoveries of minia fuffered, and any recoverors of
men in their purchases, are very much favour'd by the
judges, and not compared to judgments in other
real actions or adversary suits. 2 Inf. 353. Poph. 22,
23. 2 Vent. 32.
So if a man be felled of a reputed manor, which
really is no manor, and he fuffers 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
ftrictly 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 fere to vacate
this conveyance, when the purchaser was induced by
them by the affent of the vendor under such a denomina-
tion. 2 Rol. Atr. 396. 6 Co. 64. 2 Rol. Rap. 67. 2
Vent. 32. S. P. See Cr. Ellis. 542. 777. and 1 Keb.
591. 691. cont.
So if a recovery be suffered of a manor with its ap-
purtenances, which have been repaired parcel of
the manor shall pass; for 'tis but equitable, quod solvata
Dominus volenti rem suam in alien tranfere rata habeas-
tur; 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 indenure which was of the
manor, and no other recoverors of the manor, or of the
tur, which was occupied together but two years. 1 Sid. 190. 1
Lev. 37. 1 Keb. 591. 691. 2 Med. 235. S. C. between Thyne
and Thye.
Thynn, and note, that in all the books which report this case, 'tis said, that as to Sir Myle Finch's cafe, (which see 6 Cr. 33) all the judges of England gave their opinions under their hands, that the lands in reputation, belonging to that man, should not pass; but that Coke, after he was made Lord Coke, justice, got it adjusted otherwise, for he hath been held ever since; and well it was that it was so adjusted, because many settlements depend thereon.

If a man having a third part of a manor suffers a recovery of a moiety, this is good to pass his interest in the moiety; but because the word is conveyance (which a recovery is agreed to be,) contain more than the grantor can convey, it would be an unreasonable interpretation to make this void and entirely useless, if they be sufficient to convey so much as he might lawfully pass; so if the recovery had been in this cafe, of the moiety by the manor, by the name of the moiety, pass and partition of it, this had been good for the whole third part, and not only for a moiety of the said third part. 

In ejciement a special verdict was found, that there was a parifh of Ribton, and the village of Ribton, but the latter not of equal extent with the former; and that Sir Thynn was feised of land in tail in the parifh, but not in the will; and bargained, and sold the land in the parifh 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 serve for the land in the parifh of Ribton; and though it was objected, that where a place was named in the record, and no more said, 'is always intended a vill; and consequently, that in this cafe, the fine and recovery being of lands in Ribton, shall pass only the lands in the vill of Ribton; and that it was further urged that it was dangerous to extend the recovery farther the words of the record, because the deed declares the intention of the parties to pass the lands in the parifh, 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 parifh of Ribton; and the rather in this cafe, because the verdict found, that he that suffered the recovery had no lands in the vill, and consequently that the recovery must be void, if not extended to the parifh; and though parifhes are not so ancient as villis, and therefore till lately were never of record by writs, yet there is a law which the law takes notice of, 7 Fint. 31. 32. Sir John Ormsby's cafe. 1 Med. 250. and 2 Med. 233. S. C. But for this see Hutt. 105. Godb. Cr. Cas. 269. 2 Rol. Abr. 20. 2 Cr. Cas. 574. 120. 1 Med. 206. 2 Med. 47. 1 Fint. 143. 170. 1 Med. 78. 2 Rob. 822. 823. 824. Owen 66. and 2 Med. 236. Street v. Clithero, 83, a cafe, which seems against this cafe, but is reconcilable with this diversity, that in those cafes there were lands upon which the fine might operate, viz. the lands in the vills of Street, without taking in the parifh of Street to carry the lands in Wilton, a vill of that parifh; but here if theo in the parifh should not pass, there was no other to pass.

2. What essays and interefgs may be barred by a common recovery, and of fingle and double voucher.

In respect to essays-tail, and the barring of them by recovery, what is principally to be regarded is, that there must be a larger than the words of the record, because the deed declares the intention of the parties to pass the lands in the parifh, upon which the fine might operate, viz. the lands in the vills of Street, without taking in the parifh of Street to carry the lands in Wilton, a vill of that parifh; but here if theo in the parifh should not pass, there was no other to pass.

If a man having a third part of a manor suffers a recovery of a moiety, this is good to pass his interest in the moiety; but because the word is conveyance (which a recovery is agreed to be,) contain more than the grantor can convey, it would be an unreasonable interpretation to make this void and entirely useless, if they be sufficient to convey so much as he might lawfully pass; so if the recovery had been in this cafe, of the moiety by the manor, by the name of the moiety, pass and partition of it, this had been good for the whole third part, and not only for a moiety of the said third part. 

In ejciement a special verdict was found, that there was a parifh of Ribton, and the village of Ribton, but the latter not of equal extent with the former; and that Sir Thynn was feised of land in tail in the parifh, but not in the will; and bargained, and sold the land in the parifh 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 serve for the land in the parifh of Ribton; and though it was objected, that where a place was named in the record, and no more said, 'is always intended a vill; and consequently, that in this cafe, the fine and recovery being of lands in Ribton, shall pass only the lands in the vill of Ribton; and that it was further urged that it was dangerous to extend the recovery farther the words of the record, because the deed declares the intention of the parties to pass the lands in the parifh, 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 parifh of Ribton; and the rather in this cafe, because the verdict found, that he that suffered the recovery had no lands in the vill, and consequently that the recovery must be void, if not extended to the parifh; and though parifhes are not so ancient as villis, and therefore till lately were never of record by writs, yet there is a law which the law takes notice of, 7 Fint. 31. 32. Sir John Ormsby's cafe. 1 Med. 250. and 2 Med. 233. S. C. But for this see Hutt. 105. Godb. Cr. Cas. 269. 2 Rol. Abr. 20. 2 Cr. Cas. 574. 120. 1 Med. 206. 2 Med. 47. 1 Fint. 143. 170. 1 Med. 78. 2 Rob. 822. 823. 824. Owen 66. and 2 Med. 236. Street v. Clithero, 83, a cafe, which seems against this cafe, but is reconcilable with this diversity, that in those cafes there were lands upon which the fine might operate, viz. the lands in the vills of Street, without taking in the parifh of Street to carry the lands in Wilton, a vill of that parifh; but here if theo in the parifh should not pass, there was no other to pass.

2. What essays and interefgs may be barred by a common recovery, and of fingle and double voucher.

In respect to essays-tail, and the barring of them by recovery, what is principally to be regarded is, that there must be a larger than the words of the record, because the deed declares the intention of the parties to pass the lands in the parifh, upon which the fine might operate, viz. the lands in the vills of Street, without taking in the parifh of Street to carry the lands in Wilton, a vill of that parifh; but here if theo in the parifh should not pass, there was no other to pass.
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make a good tenant of the whole; but the court held otherwise. It was held, that the estate-tail to 3, and E. being determined, the remainder to D. in tail in the general, and all the other remainders depending thereon were barred absolutely by this recovery; for D. being the last remainder in tail in the general, and by the bargain of all the estates he hath or had, and consequently comes in representation of the remainder to himself a tail male general, and then the recovery in value goes to that, and also to all the other remainders determining thereupon, and be consequence all are barred by the recovery: but as the estatetail is not a general, the recovery was not in quittance of the recovery, for B. could not lose the estatetail he had not; but if in this case D. had made another tenant to the præcipue, and came in himself as vouchee, this had barred the intail. 3. 58 b. 2 Rot. Abs. 305.

If A. be tenant for life, remainder to B. in tail, and B. diffises A. and suffers a common recovery, himself being tenant to the præcipue; this recovery, with a fingle voucher, is sufficient to bar the estatetail in B. because he was actually feesed of that at the time of the præcipue brought against him; for his diffisio did not devest his own estatetail, but only gave him a defeable estatetail for life, which was immediately merged in his remainder, because the estatetail and his inheritance could not subsist together at the same time in him. 2 Rot. Abs. 390, 391.

Thus we see how estatetails are barred by recoveries, and the ufe 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 estatetails for the feeuity of purchasers; but the operation of a fine differs from a recovery in respect to strangers who have reversioners or remainders expectant on estatetails; for a fine does not bar them, unless they omit to make their claim within five years after their reversion or remainder is to execute; but a recovery reaches them immediately, and at the same time bars the estatetail and remainders on account of the real and imaginary reversion. 

As the recovery of a common recovery suffered by tenant in tail bars all reversioners and remainders expectant, so it avoids all charges, leaves and inconsiderations made by those in reversion or remainder, nor does it avails the land free from any such charge for ever; as where in remainder upon an estatetail granted a rent-charge, and the tenant in tail suffered a recovery; and it was adjudged, that the grantee could not discharge the recoveror; for since the rent was only at first good, because of the possibility of the grantor's remainder coming in possession, and that possibility ceases by the recovery of tenant in tail, such grant must then become void. 2 Rot. Abs. 356. Mar. 176. Bro. tit. Recovery, 28, 55.

As to a common recovery suffered by tenant in tail bars all reversioners and remainders expectant, so it avoids all charges, leaves and inconsiderations made by those in reversion or remainder, nor does it avails the land free from any such charge for ever; as where in remainder upon an estatetail granted a rent-charge, and the tenant in tail suffered a recovery; and it was adjudged, that the grantee could not discharge the recoveror; for since the rent was only at first good, because of the possibility of the grantor's remainder coming in possession, and that possibility ceases by the recovery of tenant in tail, such grant must then become void. 2 Rot. Abs. 356. Mar. 176. Bro. tit. Recovery, 28, 55.

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3. Of erroneous and void recoveries, who may avoid them, and by what method.

If A. be tenant in tail, the remainder to B. and A. suffers a common recovery, himself being tenant to the præcipue; this recovery, with a fingle voucher, is sufficient to bar the estatetail in B. because he was actually feesed of that at the time of the præcipue brought against him; for his diffisio did not devest his own estatetail, but only gave him a defeable estatetail for life, which was immediately merged in his remainder, because the estatetail and his inheritance could not subsist together at the same time in him. 2 Rot. Abs. 390, 391.

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error, for the common voucher 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 recompence to the person that lues the land; and therefore after the expiration of the inquisition recompence to so as to suppress him a real sufferer, and thereby give him the privilege of feting aside a conveyance which he is now way affected by. 

In a writ of error, recover a recovery suffered by an infant who was guardian by consent, the error aligned was in the entry of his removal by guardian, viz. Concl. ef per curiam hie quad. A. B. sequatur pro J. S. Armig. qui infra aetatu exulit utguardians præsid. J. S. where as it was objected, that since the infant was tenant to the writ, it ought to have been entered in the form of a defendant, and therefore defend for the infant; but this exception was disallowed, because the words ad sequend. for the infant signify the fame with ad defendor. for the infant; for ad sequend. is to follow and attend the buffets and suit of the infant; and the guardian being as signed to do it at will likewise have been aligned to take care of, or take upon him the defence of the infant's suit. 2 Salk. 94, 95. 1 Mod. 48. Holles v. Lex. 

In a common recovery the writ of error bears date 2 Martis Eliz. red. dte. Lucae in quarta septimana quadragesimae præsentis futurœ, the first day of March being that very quarter's day. In Lent, the recovery passeth the usual form that lend and are. In a writ of error, recovered it, the error aligned was that the words præsentis futurœ should be referred to Quadragesimae, and the writ of entry 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 there 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 refolved that since præsentis futurœ were not written at large, they may be indifferently applied either to die Lunn, by supposing them to fland for præsens futurae, or to guardians prosequi, or to support them to the recovery of præsens futurae, and where 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, at reg magis valeat quam pervert; but if the words had been at large præsens futurae, then if they muft necessarily be referred to Quadragesimae, 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 aligned were, 1. That the writ of entry was brought of an advowson of a rectory, and allo of a rent infuing out of the fame rectory, and of the writ of petition, and consequently the writ was void, but this was disallowed, because the advowson and rectory are different things; for he that has the advowson has only the right of presentation, but he that has the rectory has the profts of the church, out of which the rent infues; and consequently there can be no his petitum in this cafe, because by the demand of the advowson of the rectory, and of the rent infuing out of the rectory, the demandant recovers more than by a demand of the rectory only; another error aligned was in the demand of a rent or pension of four marks infuing out of the rectory, which is fo uncertain a demand, a pension being a diftrent thing from a rent, and recovered at 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 foynymous here, because they are demanded as infuing out of the rectory; and therefore the pension cannot be in nature of an annuity, which changes only because it is expressly to infue out of the rectory. 

In a writ of error to reverse a common recovery, the error inflicted on was, that the warrant of attorney of the voucher bore date before the Summons ad warrantandum, rejected, yet the judgment was affirmed, because the voucher may be taken for the court, before the Summons ad warrantandum, and make his attorney; and therefore to sup port the common recovery, it shall be presumed the 

vouchee was present in court and appointed his attorney) and so the deminus for the warrant and the Summons ad warrantandum. void. 1 Sid. 213. 1 Lev. 130. Raym. 70. 1 N. B. 42d. 3d. 1st.

In a Quaere the plaintiff intituled himself to an advowson by a recovery suffered by tenant in tail, in pleading which recovery he alleges two to be tenant to the praecipe, but doth not shew 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 pleadings in recoveries, the court inclined that it was not well pleaded, but delivered no judgment. 2 Mod. 70. Waken v. Blackwell. See Chit. ple. tit. and 18 Vin. Abitr. tit. Recovery.

Recoup. (From the French Recuper) Signifies the keep ing back and stopping of something which is due, and in our 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 difeiles the tenant of the land, in an ailefe brought by the difeiler, if he recovers the land and damages, the difeiler shall recomp the rent due in the damages: so of a rent-charge infuing out of land, paid by the land tenant to another, &c. he may recomp the fame. Terms de Leg. Duty 2. And an inkeeper may keep back and detail his guest's hoile, &c. till he pay for his entertainment: But a man that receives another's cattle to pasture, it is said, he may not do so, unless he be agreed between them at full he may. And as to the like.

Recurrent, (Fr.) Cowardly, faint hearted; and was formerly a word very reproachful. Fleta, lib. 3.

Rede, To cite a criminal to justice, or to accuse a criminal. Hoo. p. 655.

Reta pula Regis, The king's right to a prize, or taking of one butt or pipe of wine before the market, or another behind the market, as a cullum for every ship laden with wines. King Edw. I. in a charter of many privileges to the barones of the Cinque-ports, disbarred them of this duty. Cowell, edit. 1727.

Redatum, Claim of right, or appeal to law for recovery of goods payable. 

Rectitude, Rectitude, rights, legal dues—S i qui de rectitudine per vicem deferat, emendet, i. e. If any one does violently detain the rights of God, (titles and ob lations) let him be fined or amerced, to make full satisf act. Lys. Htn. 1. cap. 6. 

Reh, Requerre de techo, To cite one to justice. Lg. Htn. 1. r. 43. 

Recto, 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 may be pleaded in a writ which none of our ancestors or we had, and also the possession of the thing whereof the ancestor did not feel as of fee; and whereby are pleaded and tried both their rights together, viz. as well of poiffession as of property: So that if a man once lose his cause upon this writ, either by judgment, affiz or habell, he is without all remedy, and shall be excluded with exceptione rectius judicatur. Bruet., lib. 5. chap. 1. cap. 1. & feq. It is divided into two kinds, 1. Restum potens, a writ of right patent, and Restum clausum, a writ of right close. This the Civilians call Judithum petitum. The writ of right patent is so called, because it is sent open, and is in nature the highest writ of all others, lying always for him that hath fee simple in the lands or tenements fancied for, and not for any other. And when it lieth for him that challengeth fee simple, and in what cafes, see F. N. B. fol. 6. where he speaks of a special writ of right, according to the custom of London. This writ also is called Bricov Magnus de feque. And Plow. 25. fol. 23. & feq. 1. A writ of right close, is a writ directed to a lord of ancient demesne, and lieth for those who hold their lands and tenements by charter in fee simple, or in fee tail, or for term of life, or in dower, if they be ejected out of such lands, &c. or dispossessed. In this case a man or his heirs, may for out this writ of right close, di rected to the lord of the ancient demesne, commanding him
him to do him right, &c. in his court. This is called Breve partum de rito. Reg. Orig. fol. 9, and Britton, cap. 129, in finis, also F. N. B. fol. 11, &c. Yet note, That the 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 said in divers other cases, of which fee the table of the Register Original, vol. 2. cap. 15. This writ is properly the tenant's right to Court between kinmen 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, see Futa, lib. 6, cap. 3, &c. Glanville seems to make every writ, whereby a man lies for any thing due unto him, a writ of right, as Ablin. cap. 11, &c. See Nat. Law. 1. &c. Reg. de adoratione ecclesiae, Is a writ of right, by which a man hath right of adoration, and the parson of the church dying, a stranger presents his clerk to the church, and he not having brought his action of humane impedit, not dawson jurisdiction, within six months, but suffereth the stranger to usurp upon him. And this writ he only may have that claimeth the adoration to himself and to his heirs in fee. And as it lies for the whole adoration, so it lies also for the half, third, fourth part. Old Nat. Brev. fol. 24, Reg. Orig. fol. 29. 2. Reg. de ceteribus terrar et hereditatis, Was a writ of right of the land held by the tenant in fee to uphold them, died in nonage, against a stranger that entered upon the land, and took the body of the heir; but the statute of 12 Car. 2. cap. 24, it becomes ufeles as to lands held in capite, or by knight service, but not where there is guardian in fucceffe, or appointed by the law will and testament of the ancestor. The form of it, appeareth in F. N. B. fol. 158, and Reg. Orig. fol. 161. 3. Reg. de voc, Is a writ of right of dower, which lieth for a woman that hath received part of her dower, and purposeth 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 Fitzherbert, fol. 7, Reg. Orig. fol. 3, and the New Book of Entries, verb. Dvni. 4. Reg. de vocante under nihil habere, Is a writ of right, which lies in case where the husband having divers lands or tenements, hath allowed no dower to his wife, and the thereby is driven to sue for her thirds against the heir, or his guardian. So also the tenant or possessor to recover the fee for life dieth also, the one fitter entering upon all the land, and so defoencing the other; the fitter so deforced shall have this writ to recover part. F. N. B. fol. 9, Reg. Orig. fol. 3, 5. Reg. quando Dominus remittit, Is a writ of right, which lies in case where lands or tenements are that lie under the jurisdiction of a lord, are in the possession of the lord, is in the nature of a demand in a writ of right: for if the lord hold no court, or otherwise at the prayer of the demandant, or tenant, shall fend to the court of the King his writ, to put the cause thither for this time, (having to him at other times the right of his dignify) then this writ issues out for the other party, and hath the same from the words contained, being the true occasion thereof: This writ is claus, and must be returned before the justices of the Common Bank. Old Nat. Brev. fol. 16, Reg. Orig. fol. 4, 6. 6. Reg. de disclaimer, Is a writ that lies where a lord in the King's court of Common Pleas avoweth upon his demand in a writ of right, the thing aforesaid to him; and the writ of disclaimer shall have this writ, and 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 Wiflom. fol. 2, cap. 2, Vol. II. No. 119. Reg. ut quo (Lat.) Signifies a governor; and rector ecclesiasticus parohialis is he that hath the cure or charge of a parish church, qui tantum jus in ecclesia parochialis habitat, quantum potentia in ecclesia collocata: It hath been over-ruled, that rector ecclesiasticus parohialis, is he that hath a parsonage when there is a vicarage endowed; and he that hath a parsonage without a vicarage is called parson: but this distinction seems to be new and fable. Isasael certainly uses it otherwise, lib. 4, tract. 5, e. 1. Reg. de testamento quintum rectoribus ecclasiasticis, qui instituti sunt fur eorpiis & ordinariis ut parsons: where it is plain, that rector and parson are confused. Observe also these words there following, Item dici possit rectoribus committit de ecclasis prebendaris. Item dici possit rectoribus vel dignis abbatibus, prioriis &c. alliis, quibus ecclasis ad propriis proprios. See Parch. Audito, p. 549. Recutum (Communis recutum) A trial at law, or in common course of law. Statute ad recutum, to stand trial. Cowell, edit. 1727. Recutum, (Effe ad recutum in curia Domini,) The same with stare ad recutum. Leg. Hain. 1. cap. 43, 55. Recutum rogatur, To petition the judge to do right. Leg. Jud. &c. 1. &c. Recutus in curia, Is verba right, in court, and signifies one that stands at the bar, and no man objects anything against him. Smith de Republ. Angil. 1. c. 3. We take it also, that when a man is outlawed, he is extra legem parasitus; so when he hath reverted the outlawry, and can partake of the benefit of the law, he is recutus in curia. Cowell, edit. 1727. Recuriant, Is a person who refuses to go to church, and worship God, after the manner of the church of England as by law establisht. The penalty of 20 l. a month for nonconformity, 23 El. c. 1. f. 5. This act not to abridge ecclesiastical jurisdiction, 23 El. c. 1. f. 15. A recurent conforming to be discharged, 23 El. c. 1. f. 10. 1 Jac. c. 1. f. 2. 2. Fraudulent conveyances to avoid the penalties of recurrency made void, 29 El. c. 6. Conditions of recurrency to be certified into the Exchequer, 23 El. c. 1. f. 15. The crown may seize the goods and two-thirds of the lands of recurrents, for non-payment of the 20 l. a month, 29 El. c. 6. f. 4. Recurrents shall not depart five miles from their dwelling, or birth, 35 El. c. 2. f. 5. To forfeit their titles, 35 El. c. 2. f. 5. For want of ability to pay the penalty, they shall abjure, 35 El. c. 2. f. 8. Jurefts and priests refusing to answer shall be committed, 35 El. c. 2. f. 11. The manner of a recurent's submission, 33 Elia. c. 2. f. 15. None shall go or send any other to a popish fermenary, 1 Jac. c. 1. c. 6. f. 6. &c. &c. 12 W. 3. c. 6. 6. Recurrents conforming, shall receive the communion yearly, 3 Jac. c. 1. c. 4. f. 9. Convisions to be certified into the Exchequer, 3 Jac. c. 1. c. 4. f. 9. Served foreign fiate without oath felony, 3 Jac. c. 4. f. 18. Bishops or two justices may tender oath of allegiance, 3 Jac. c. 4. f. 13. Where persons refusing the oath incut pranus, 3 Jac. c. 1. c. 4. f. 41, 41. Withdrawing from them in obedience or reconciling them to Rome, treason, 3 Jac. c. 1. c. 4. 22. The penalty of 12 l. for every default in not coming to church, 3 Jac. c. 1. c. 4. f. 27. The penalty of retaining recurrents, 3 Jac. c. 1. c. 4. f. 33. 7 1
Recipients refrain from coming to the presence of the King or the Prince. 3 Jac. 1. c. 5. 30 Car. 2. 2. 1.

To depart from London, 3 Jac. 1. c. 5. f. 3. Disabled from practicing law or physic, or bearing office, 2 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.

Disabled of children sent beyond sea for education without preference, 3 Jac. 1. c. 5. f. 16.

Recipients disabled from preying to a church, or granting an adwosion, 3 Jac. 1. c. 5. f. 18. Exempted from performing the popish religion, 12 Ann. c. 14. 11 Geo. 2. c. 17. f. 5.

The presentation to churches of recipients, given to the universities, 3 Jac. 1. cap. 5. f. 10. And of persons refusing the declaration, 1 W. & M. c. 26.

Recipients disabled 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 foceas, 3 Jac. 1. c. 5. f. 73. Penalty of importing popish books, 3 Jac. 1. cap. 5. f. 25.

Recipients houses may be searched for relics, 3 Jac. 1. c. 5. f. 26. Arms and ammunition of recipients to be feized, 3 Jac. 1. c. 5. f. 27.

Penalties on married women recipients, 7 Jac. 1. c. 6. f. 1.

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. six months after their return, 3 Car. 1. c. 1. f. 24. 4.

Penalties on persons not educated in the popish religion, feeding their children to be so educated, 25 Car. 2. c. 2. f. 8.

Persons in office to take the oaths and teft, 25 Car. 2. c. 2. f. 1. 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 recipients convicted, 30 Car. 2. b. 2. 1.

Recipients may come into the King's presence, by licence of six Privy councillors, 30 Car. 2. b. 2. f. 12. Offenders taking the oaths in Chancery to be disfranchised from future, 30 Car. 2. b. 2. f. 13.

Third refusal of the declaration against popery by any person, convicted of recusancy, 1 W. & M. c. 8. f. 9.

Recipients disabled to nominate hospitals, 1 W. & M. c. 26.

Required papists refusing the oath, to remove ten miles from London, or be convicted of recusancy; except trade-men registering their names, &c. 1 W. & M. c. 6.

Persons in office to take the test in six months, 16 Geo. 2. c. 30. f. 3.

Conviction of recusants except out of general pardon, 2 Geo. 2. c. 53. f. 56. See Papists.

Red, Is an old word, signifying advice, from the Sax. Redcif. 2.

Rediana, Is one who advised the death of another. See Debuta.

Red book of the Exchequer, (Like rhwbo Stataorri) A manuscript volume of several memorials tories, in the keeping of the King's remembrancer in the office of Exchequer. It has some things (as the number of the houses, and land in many of our counties, &c.) relating to the times before the conquest. The ceremonies used at the coronation of queen Eleanor, wife to Henry 3. are there at large. There is likewise an exact collection of the oecodes under Henry 2. Rich. 1. and King John, compiled by Alexander of Stowesford, archdeacon of Salop, and master of St. Paul's, who died in the year 1246. 31 H. 3. See Nichols's His. Library, part 3. p. 100.

Redenburn, Is used substantively for the clause in a
A fell a place in the guard for 200l to B who enjoyed it three years, and then it was turned out, and forgottened ; but B, by his improved credit ordered that what money had been received, should be paid. 2 Chan. Cafes 82. Hill, 33 & 35 Car. 2. Count v. Hammond.

If an executor pays a debt on a simple contract, there shall be no redounding to a creditor of an overcharge, 3 & 6 Geo. 3. 306. 11 Rep. 121. Waddington.

A mortgagee received interest on an old mortgage after the rate of 8l. per cent. after the forfeiture for reducing it to 6l. per cent. decreed, and so confirmed a former decree, that the 8l. per cent. paid should be retained, and that the 6l. per cent. Should not be difcounted or applied to another mortgage from the principal, though it had been so paid for fifteen years after the making the forfeiture. 2 & 5. 42. 78. Poljsb. & Trin. 1658. Wallen v. Penny.

Peculiar, is where one hath by law a right and power of having or doing something of advantage to him, and it relishes it. An executor may refuse an executorship; but the refusal ought to be made before the ordinary: If an executor be summoned to accept or refuse the executorship, and he doth not appear upon the summons and prove the will, the court may grant administration, which shall be good in law till such executor hath proved the will; but can no longer than one week after the refusal the executorship, unless he hath intermeddled with the estate. 1 Lev. 154. Cro. Elia. 858. There is a refusal of a clerk presented to a church, for illiterature, &c. And if a bishop once refuses a clerk for insufficiency, he cannot accept of him afterward, if a new clerk is presented. 5 Rep. 58. 1 C. 37. See 1 E. B. In action of tender, a demand of the goods, and refusal to deliver them, must be proved, 10 Rep. 56.


Regales, The King's fervants or officers. Welfingham, anno 1291.

Regal Filth (mentioned in stat. i. Elia. rep. 5.) Are solarus and slumberous, some and perplexed. The King by his prerogative ought to have every whole cast on shore, or wrecked, in all places within this realm, (unless 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 whalesbones for her personal vestment. Baker's Chronicle, m. 25. Durbe. See Traire de nos Rigen, pag 127.

Regalia, (dictatu juris omnium ad vicem posthuma, faih Spelman.) The royal rights of a King, which the Civilians reckon to be 1. Power of judicature. 2. Power of life and death. 3. Power of war and peace. 4. Magnesios goods, as wills, eftates, &c. 5. Appointments. And 6. Minting of money. See Heydall. Also the crown, scepter with the crofs, scepter with the dove, St. Edwara's flaff, four several founds, the globe, the orb with the crofs, and other such like things used at the coronation of our Kings, are called regalia. See the relation of the coronation of King Charles Second in Baker's Chronicle. And regalia is sometimes taken for the dignity and prerogative of the King. Regalia is also taken for those rights and privileges which the church enjoys by the grants and other concessions of Kings. And sometimes it is taken for the patrimony of the church as Regalia Sancti Petri, &c. It signifies all the lands and hereditaments granted by Kings to the church, viz. Cepinum in manum nostram baroniam & regalia quae archiepiscopos Eborae de nobis tactet. Pryn. lib. Angl. 2. tom. pag. 231. These, whilhe in the possession of the church, were subject to the same services as all other temporal inheritances; and after the death of the bishop they right returned to the King, until he interred another with them; which in the reign of Wil- liam the Conqueror, and some of his immediate succes-

Ref.  

A statement, an enumeration of the rights and privileges of the King, which the Civilians reckoned to be 1. Power of judicature. 2. Power of life and death. 3. Power of war and peace. 4. Magnesios goods, as wills, estates, &c. 5. Appointments. And 6. Minting of money. See Heydall. Also the crown, scepter with the cross, scepter with the dove, St. Edward's staff, four several founds, the globe, the orb with the cross, and other such like things used at the coronation of our Kings, are called regalia. See the relation of the coronation of King Charles Second in Baker's Chronicle. And regalia is sometimes taken for the dignity and prerogative of the King. Regalia is also taken for those rights and privileges which the church enjoys by the grants and other concessions of Kings. And sometimes it is taken for the patrimony of the church as Regalia Sancti Petri, &c. It signifies all the lands and hereditaments granted by Kings to the church, viz. Cepinum in manum nostram baroniam & regalia quae archiepiscopos Eborae de nobis tactet. Pryn. lib. Angl. 2. tom. pag. 231. These, whilst in the possession of the church, were subject to the same services as all other temporal inheritances; and after the death of the bishop they right returned to the King, until he interred another with them; which in the reign of William the Conqueror, and some of his immediate successors.

One ordinary cause to complicate between them; and in others to make his report how the matters stand, that the court may settle the matters according to the course of precedents. Poljsb. 1705. If a master is in difference between the plaintiff and defendant be referred to the secondary, 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 make the defendant to make his report without hearing of the party not attending. See 18. 94. 272. 10. 94. 122.

Regallia aqua, High-water, or return of a stream, when it is dammed or stop for a use of a mill. Mon. Art. 2. tom. 913.

Refunding, an attorney, an ill-fact of the thing of which he afterwards dies, B, for his clerk and receives 100l from the parties, and 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. 96. pl. 437. Trin. 1687. Neven v. Renou.

A was indebted to B, by mortgage in 400l. principal money, which B died leaving 5. executor. On a bill in Chancery, for payment of debts of A, out of lands charged with the same, the matter reported 700l due on the said mortgage, and the executor received the whole 700l. but afterwards it appeared that 535l. 13l. 14d. had been paid to B, the tetchor by A. in the life-time of the latter. B, given him the Cefar quo vie and infant, brought a bill to be relieved against this over-payment; the executor defended pleaded all the former proceedings, and also that he, before any notice of the over-payment, as executor of B, had paid away the 700l. in the debts of B. The matter of the Rolls decreed the executor to repay the fund, and he was to be at liberty to use such creditors, as also mistake he had paid to refund; and this decree was affirmed by Lord Chancellor Clausre, who compared it to the case 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 said that in the last case of an appeal if the defendant had delayed paying away the money to the tetchor's creditors, it would be otherwise; for this would be drawing the executor into a fault. Wm. & Rich. Rep. 355. Trin. 1717. Poljsb. v. Roy. 14. for 600l. purchases B's interest and possibity in such an estate to him and his heirs for ever, and to have his 600l. back, but his bill was dismissed. Fin. Rep. 288. Hill. 29 Cor. 2. Maynard v. Malden.

Crofs bill was brought for creditors to take their proportionable shares, but the debts having been paid to them, and released given by them, it was dismissed. 2 Elia. B. 37. 31 Cor. 2. Tucker v. Scarle.
Regis, was often neglected or delayed; and as often the bishops complained thereof. This appears in Ordinarius Viol., lib. 10, and in many other writers in those days. It is true, that he was not of a swamp disposition, as appears from two complaints of his against Henry 2. for that Episcopatus vacantes & possessionis pecuniarius commissis, diu vacare valeret, & ecclesiasticas potius ultra applicatione in jujur rediget. So in Malm- bury, lib. 1, de Gest. Pontificum, p. 285.

Regulus facet., is to do homage or fealty when he is invested with the see, quin, non. Regulus praes totius temporis principium, 7 Calend. Octob. Cantuar. aedificij.

Regius, (Regius) in 4, proceed, fice, and writs of quithe, and of the officer, without written by Bishop Brownlews, him until the 19th of September 1704, shall be made, and of all wills to be kept, and sealed, and feeated and mortised, and all conveyances, by will of lands contained in any memorial to be registered, that shall be made after the registering of such memorial, shall be adjudged fraudulent and void against any such subsequent purchaser or mortgagee for valuable consideration, under such memorial thereof be registered before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim; and every devise by will of lands contained in any memorial so registered, that shall be made before the registering of such memorial, shall be adjudged fraudulent and void against any such subsequent purchaser or mortgagee, under a memorial of such will be registered.

Regius is the register of deeds. The registering of deeds and incumbrances is a great security of titles to purchasers of lands, and to mortgagees; and the following acts have been for that purpose. Stat. 2 Ann. cap. 4, sect. 1. A memorial of all deeds and conveyances which after the 29th of September 1704, shall be made, and of all wills to be kept, and sealed, and mortised, and all conveyances, by will of lands contained in any memorial so registered, that shall be made before the registering of such memorial, shall be adjudged fraudulent and void against any such subsequent purchaser or mortgagee, under a memorial of such will be registered.

Regius, (Regius) from an old French word giftier, 1, in a duty registrator, for tax conjectures. It is properly the name of the regiswaters, a place where an election is held up; and from hence publick books, in which various things are inferred; are properly termed regiswaters; and accordingly the office, books and rolls, wherein the proceedings of the Chancery, or any spiritual court are recorded, are called by this name. See Nichols's English Library, part 3, pag. 83.

Registis deeds. The registering of deeds and incumbrances is a great security of titles to purchasers of lands, and to mortgagees; and the following acts have been for that purpose. Stat. 2 Ann. cap. 4, sect. 1. A memorial of all deeds and conveyances which after the 29th of September 1704, shall be made, and of all wills to be kept, and sealed, and mortised, and all conveyances, by will of lands contained in any memorial so registered, that shall be made before the registering of such memorial, shall be adjudged fraudulent and void against any such subsequent purchaser or mortgagee for valuable consideration, under such memorial thereof be registered before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim; and every devise by will of lands contained in any memorial so registered, that shall be made after the registering of such memorial, shall be adjudged fraudulent and void against any such subsequent purchaser or mortgagee, under a memorial of such will be registered. Sect. 2. One publick office for registering such memorials shall be kept in Wakefield, to be executed by a fit person elected, or his sufficient deputy, to continue in the office during the time of his being in the said office; and any fit person appointed by him, and all persons who are to be registered for any execution of deeds or conveyances, under a memorial of such will be registered. Sect. 3. All elections of a regiswaters shall be by general ballot, viz., all the freeholders that have freedom within the Weft-riding, of the yearly value of 100 l. (to be determined by the oath of the elector before the scrutators) shall be electors of the regiswaters; and the justices of peace for the Weft-riding, or any five Justices appointed by them, shall be scrutators of the ballot, who, in the presence of the electors, shall place glass vessels, into which each elector shall put open paper, containing the name of such perfon as he approves of to be regiswater; which papers shall be taken out in the presence of the scrutators, and the names of every person therein shall be written by the scrutators and expounded thereon to the several scrutators of their electors, and the same ballot shall be read over in the presence of all the scrutators, and first up in the view of the electors, and the perfon upon whom the majority shall fall, shall be regiswater. Sect. 5. As often as the office shall become vacant, the justices of peace at the quarter-seions next after such vacancy shall declare the vacancy, and by order of the justices to be filled within one month, and above three weeks, ensuing the end of such fession, for the electors to assemble at Wakefield, to choose a person to supply the vacancy; and the clerk of the peace shall cause copies of such order to be delivered to the chief constables of the several wapentakes, who shall publish the same in every market town on the market day of the next market-day, and affix the same at the publick place there.

Salut. 6. Upon the death of any such regiswater, and until another election, the executors and administrators of the
the register deceased, together with the faculties for the said register, shall appoint a person to execute the office, for whose demeanor the security shall be answerable.

Sec. 7. All memorials shall be in writing in vulgur 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 enter upon 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, shall be attested by the said witnesses, and every memorial, when properly contained in every certificate or copy, and for every search for.

Sec. 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 devisor 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 extrarural places, where such lands are, in such manner as the same are set forth in the memorandum attached to the deed or will, or probate of the same, of which such memorial is to be attested, shall be produced to the Register at the time of entering such memorial, who shall indorse a certificate on such deed and will, or probate thereof, and mention the day, hour and time, on which such memorandum was brought and entered, and the 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 Register-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 calendar of all parishes, extrarural places, and townships, within the Well-riding, with reference to the number of every memorial that concerns lands in such parish, &c. 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.

Sec. 9. Such Register, before he enter upon the office, shall be sworn, before the justice of peace, or three of them, that shall be present at his election, in these words.

YOU shall truly and faithfully perform and execute the office and duty that is directed and required by all 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, any authorization to any person to give or procure any money, gratuity or reward whatsoever, for procuring, or obtaining the said office for you:

So help you God.

Sec. 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 recognition 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-fair, of the penalty of £200, to his Majesty, to be taken within the body of the recognizance approved of by the Register, conditioned for his true and faithful performance of his duty in the execution of his office; the same to be transmitted by the justices within one month into the office of his Majesty's Remembrancer of the Exchequer.

Sec. 11. When any Register shall die or surrender, and the deputies appointed for the register, if it appear, on investigation of the misconduct, or if the misconduct appear to have been committed by such Register, the recognition shall become void.

Sec. 12. Such Register, or his deputy, shall give due attendance at his office every day (except Sundays and holy-days) between nine and twelve in the forenoon, and two and five in the afternoon, for the dispatch of business, and shall make searches concerning all memorials registered as aforesaid, and give certificates concerning the same, if required.

Sec. 13. Such Register shall be allowed for the entry of every memorial in, in case the same do not exceed 200 words; but if such memorial exceed, then after the rate of £d. an hundred for all the words above the first 200, and the like fees for the like number of words contained in every certificate or copy, and for every search for.

Sec. 14. If any such Register, or his deputy, neglect his duty, or commit or suffer any undue or fraudulent practice in the office, and be thereof convicted, such Register shall forfeit his office, and pay treble damages with costs to every person injured thereby, to be recovered in any of his Majesty's courts at Westminster.

Sec. 15. The person, nominated upon the death of any Register to execute the office during the time the same shall be vacant, shall take the oath appointed to be taken by such Register and his deputy, before two justices of peace; and if such person be convicted of any neglect, or mentioned fraudulent practice, he shall pay treble damages with full costs to every person injured, to be recovered as aforesaid.

Sec. 16. This act shall not extend to any copyhold estates, or to any leases at a rack-rent, or to any lease not exceeding 21 years, where the actual possession goeth with the estate.

Sec. 17. Where these are more writings than one for perfecting any conveyance which concern the same lands, it shall be a sufficient memorial and register thereof, if all the lands, and the parishes, townships, hamlets or extrarural places, where the same lie, be once named in the memorial, register and certificate, of any one of the deeds or conveyances. Whereof in the case of the said conveyance, with the names and additions of the parties and witnesses, and the places of their abodes, be set down in the memorials, registers and certificates of the same, with a reference to the deed whereof the memorial expresses the parcels, and directions to find the register of the same.

Sec. 18. A memorial of such deeds and wills, as shall be made or published in London, or in any other place not within forty miles of the Well-riding, which may affect lands in the Well-riding, shall be registered, in case an affidavit sworn before one of the judges at Westminster, or a Master in Chancery, be brought with the memorial to the Register, wherein one of the witnesses relating to such deeds shall swear he saw the same executed, and the memorial signed and sealed, or wherein one of the witnesses to the memorial of any will shall swear he saw such memorial signed and sealed; and the same shall be a sufficient authority to the Register to give a certificate of the registering such memorial; which certificate signed by the Register shall be evidence of the registries.

Sec. 19. If any person shall forge or counterfeit any such memorial or certificate, and be thereof convicted, such person shall incur such penalties as by 5 Eliz. cap. 14, are inflicted upon persons for forging or publishing false deeds, whereby the freedom of any person may be meleled; and if any person shall forswear himself before the Register, or before any Judge or Master in Chancery, in the cases aforesaid, 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.

Sec. 20. When the register shall die within six months after the death of the devisor dying within England, Wales and Berwick, or within three years after the death of every devisor dying upon or beyond the sea, shall be effecual.

Sec. 21. In case the persons interested in the lands devised, by reason of the death of such will or other inevitable difficulty, without their willful neglect, shall be disabled to exhibit a memorial within the times limited, in such case...
of the registry of the memorial within six months after their attainment of such will, or of their deaths thereof, or religious belief, shall be insufficient.

Sect. 22. No member of parliament shall be capable of being chosen Registar, or of executing the office, nor shall any Registar or his deputy be capable of being chosen a member.

Sect. 23. This act shall be a public act.

In case 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 deeded, that having notice of the first purchase, that it was not registered, bound him, and that he was therefore liable for registered fraud; the design of these acts being only to give parties notice, who might otherwise without such registry, be in danger of being impeded upon by a prior purchase or mortgage, which they are in no danger of when they have notice thereof in any manner, that's not by the registry. Deemed by my Lord Chancellor King. Act. Reg. Coffer 358. pl. 12. Blaydes v. Blaydes.

Stat. 5 Ann. c. 18. sect. 1. All bargains and sales of lands within the said West-riding, intolled before the Registar in the publick office at Halifax, shall be effectual, according to the act 27 H. 8. c. 16. and the Registar or his deputy, (together with one of justice of peace) shall return into the Registry-office, the acknowledgments of the bargainers; and shall intoll such bargains and sales; and indorse a certificate on such bargains and sales, of the times of intolling, and sign the same; and the rolls thereof shall keep in the publick office upon record among the memorials of deeds.

Sect. 2. Deeds of bargain and sale intolled, and copies of the intollment thereof, shall be allowed in all courts as sufficient evidence, as bargains and sales intolled in the courts at Westminster.

Sect. 3. Such intollment of such deed in the Registar-office shall be deemed the entering of a memorial thereof.

Sect. 4. No judgment, statute or recognizance (other than one that 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 Registar-office, expressing, in case of such judgment, the names of the plaintiff, and the names and addresses thereof, the names and address of the defendants, and the time of intolling; and in case of statutes and recognizances, expressing the date of such statute or recognizance, the names and addresses of the cognizors and cognizance, and where what sums, and before whom the same were acknowledged; and the party shall produce and leave with the Registar. And if the memorial be filed, a memorial of such judgment, statute or recognizance, signed by the proper officer, together with an affidavit sworn before one of the judges at Westminster, or a man in Chancery, that such memorial was duly signed; which memorial such officer is required to give such plaintiffs or conoizers, or their executors or administrators or attorneys, they paying 1s.

Sect. 5. The Registar 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 Registar for the faithful performance of his duty shall stand a security, as well for the due intollment and safe keeping of the intollments of all bargains and sales intolled before the Registar, as for his faithful performance of his duty in the execution of the office of Registar.

Sect. 7. The Registar shall be allowed for intolling every such bargain and sale intolled, and for certificate, 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 5 Eliz. cap. 14. are imposed for forging or publishing of false paper, or rounding a true book or record, or any book or record. And if any person shall for which purpose, before the Registar, or before any judge or master in Chancery in the courts 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 Registar in case of recourses, shall be signed by the Registar or his deputy, in the presence of two persons, who shall set their names as witnesses.

Sect. 10. In case of mortgages, judgments, statutes and recognizances, if a certificate shall be brought to the Registar, signed by the mortgagees and mortgagors, plaintiff and defendants, recognizor and cognizor respectively, their executors, administrators or assignees, and attested by two witnesses, whereby it shall appear, that all monies due have been paid in discharge thereof; which witnesses shall upon oath before the said Registar prove such monies to be satisfied, and that they saw such certificate signed; the Registar shall make an entry in the margin of the register-books, against the intollment of such mortgage, or registry of the memorial thereof, and against the registry of such judgment, statute or recognizance, and mortgage, &c. was satisfied, and shall file such certificate upon record in the margin of the register-books, and shall make an entry in the margin of the register-books, and shall make an entry in the margin of the register-books, thereby undoing any subsequent purchaser or mortgagee for valuable consideration, unless such memorial be registered, before the registrator the memorial of the deed under which such subsequent purchaser or mortgagee was disposed to it, and if such dispense is void, by will shall be adjudged fraudulent and shall be brought against such subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered as is hereinafter directed.

Sect. 11. If any judgment, statute or recognizance, 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 public act.

Stat. 6 Ann. c. 35. § 1. A memorial of all conveyances, which after the 29th of September 1768. shall be made, and of all wills where the devisee 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 country of King's Lynn 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 a memorial of such will 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 justices of peace at their quarter-fellions, in such manner as they shall think fit) in a list, or registry, upon which they repairs of county bridges) shall be established at Beverley.

The act contains other directions in 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 intolled in pursuance of this act, whereby any effect of inheritance in fee-fimple is limited to the bargainer, and the words grant, bargain and sale, shall amount to, and be construed to be, express covenants to the bargainer, 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 intolling intollable of the prohibitions hereby granted, bargain and sold, of an indestructible estate in fee-fimple, free from all incumbrances (rente and services whereof 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 and in all manner of the intolling 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 bargainer, his heirs, executors, administrators and assigns, may in any action assign breaches thereupon, as they might do in case such covenants were expressly inferred.
Sect. 31. Every leaf of the register-books and inrolment-books shall be signed by two justices of peace appointed or returns, and if any thereof shall be made from time to time by the clerk of the peace of the said riding in the order-book of the feftions, and signed by the justices that shall sign the register-books and inrolment-books; and a like entry shall be made upon record and signed, of the number of the register-books and inrolments that are made after any of them contains, in the Register office.

Sect. 32. All the clausas in this act concerning the East-riding, and the town of Kingfian upon Hull, and not contained in the acts 2 Ann. cap. 5. and 3 Ann. c. 18. shall extend unto all lands within the West-riding (the mortgage or purchase whereof shall be registered) in the said riding and in the city of Hull, as if contained in the said acts.

Stat. 7 Ann. cap. 20. sect. 1. A memorial of all conveyances, which after the 20th of September, 1702. shall be made, and of all wills where the devizor shall die after the said day, concerning any lands in the county of Middlesex, may be registered; and every such conveyance shall be adjudged fraudulent against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial thereof be registered before the registering of the memorial of the deed under which such subsequent purchaser or mortgagee shall claim; and every such devise by will shall be adjudged fraudulent against any such conveyance, or any other devise of any lands, whereby any lands in the North-riding, or hereby may be affected, may be registered; and every such deed or conveyance, judgment, &c. shall be adjudged fraudulent against any subsequent purchaser or mortgagee, plaintiff or cognizee, upon valuable consideration, unless such memorial thereof be registered, before the registering of the memorial of the deed or conveyance, judgment, &c. under which such subsequent purchaser or mortgagee, plaintiff or cognizee, shall claim; and every such devise by will shall be adjudged void against a subsequent purchaser or mortgagee, plaintiff or cognizee, upon valuable consideration, unless a memorial of such will be registered.

Sect. 7. Any 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. 7. If such person appointed Register shall be convicted of any neglect, misbehaviour or fraudulent practice, in the office, he shall be liable to pay treble damages, with full costs of every partition injured.

The following feftions are to the same effect as sect. 7, 8, 15, 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 testator.

The following feftions are to the same effect as sect. 7, 12, 13, of the said act 2 Ann. c. 4.

Sect. 11. Each of the Registers or masters, at the time of his being sworn into the office, shall enter into a recognizance with securities (to be approved of by the Lord Chancellor, the Chief Justices, and Chief baron, or one of them) of the penalty of 2000l. unto her Majesty, to be 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 transmitted by such Chief Justice within one month after the date, into the office of her Majesty's remembrancer of the Exchequer.

The following feftions are to the same effect as sect. 7, 14. The damages to be forfeited by any such Register, for any neglect, misbehaviour or fraudulent practice, shall be recovered in her Majesty's courts at Westminster.

Sect. 16. In case of mortgages, if a certificate shall be brought to the Registers, signed by the mortgagee, &c. that all monies due upon such mortgage have been paid, &c. 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 copoloid effects, or to any leases at rack rent, or to any leases not exceeding 21 years, where the actual publication of the same is directed to be made within 12 months from the date of the same, in Serjeants'-law, the inns of court, or inns of Chancery.

The rest 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 deeds and conveyances, which after the 20th of September, 1736. shall be made, and of all wills where the devizor shall die after the said day, and of all judgments, actions, and recognizances (other than such as shall be entered into in the name and upon the account of his Majesty) which shall be obtained or entered into after the said day, whereby any lands in the North-riding, hereby may be affected, may be registered; and every such deed or conveyance, judgment, &c. shall be adjudged fraudulent against any subsequent purchaser or mortgagee, plaintiff or cognizee, upon valuable consideration, unless such memorial thereof be registered, before the registering of the memorial of the deed or conveyance, judgment, &c. under which such subsequent purchaser or mortgagee, plaintiff or cognizee, shall claim; and every such devise by will shall be adjudged void against a subsequent purchaser or mortgagee, plaintiff or cognizee, upon valuable consideration, unless a memorial of such will be registered.

Sect. 2. One public office for registering such memorials shall be established in manner following viz. The clerk of inrolment in Chancery for Middlesex, the Chief clerk to inrol Pleas in the Queen's Bench, the clerk of the warrants in the Common Pleas, and the Queen's remembrancer or his deputy in the Exchequer shall be the Registers, or masters of the office, and shall appoint one or more persons, for whom they shall be accountable, to be their deputies; which Registers shall perform all things intended by this act in some office near the Inns of court or Chancery; and all the Registers shall present 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 one of them, by writing; and the Lord Chancellor, the two Chief Justices and Chief baron, or any three 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 convicted of any neglect, misbehaviour or fraudulent practice, in the office, he shall be liable to pay treble damages, with full costs of every partition injured.
and attested by two witnesses, shall be good evidence of such deeds, wills or conveyances, destroyed by fire or other accidents.

Sec. 23. At the time any deed or will shall be brought to be inrolled, one of the witnesses shall make oath or affirmation before the Register, that such deed was duly executed by the grantor, or that such will was signed and published by the devisor.

Sec. 24. Such deeds and wills, as shall be made and executed in any place not within forty miles of the office, may be entered at length, in case 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 witnesses shall swear or affirm, that he saw the deed executed, or will signed and published.

Sec. 25. Such inrollment of such deeds and wills shall be deemed to be the entry of a memorial thereof, pursuant to this act.

Sec. 26. Such Register shall be allowed for the entry of every memorial 1 s. but if such memorial exceed two hundred words, then after the rate of 4 d. an hundred for all the words in such memorial, over and above the first two hundred words; and the like fees for every hundred. If inrolled, and the deeds and wills registered at length, and for every search 1 s.

The fees following sections are to the same effect as sect. 12, 13, 14, 15, 16, of the said act of 2 Ann. and sect. 10, of the said act of 3 Ann. c. 18.

Sec. 32. If any judgment, statute or recognizance, be registered within twenty days after the acknowledgment or inrolling thereof, it shall be as available as if such memorial had been entered on the day of the signing or acknowledgment.

The refusal of this act is to the same effect as sect. 16, 22, 23, of the said act of 2 Ann. and sect. 30, 31, of the said act of 6 Ann. c. 35.

Stat. 25 Geo. 2. cap. 4. sect. 1. The deputy or secon-
dary of the chief clerk to inroll pleas in the King's Bench, called the Master of the King's Bench Office, shall be one of the Register's of the office for the things contained in the 7 Ann. cap. 20. Instead of the chief clerk to inroll pleas in the King's Bench, with the like powers as by the said act are given to such chief clerk; and the chief clerk shall be discharg'd from being one of the Register's for inrolling such deeds or, for the county of Middlesex as are mentioned in the said act. The Register which such chief clerk as one of the said Registers would have been subject to.

Sec. 2. Such secondary, called the Master of the King's Bench Office, shall before he enters upon the said office of one of such Registers, take the oath prefcribed by the said act, and enter into such recognizance as therein mention'd, as being liable to such punishments for misbehav-

Sec. 3. This act shall be a publick act.

Regnum provecto, (mentioned in flat. 12 Car. 2. c. 17.) Henry VIII. founded five lectures in each university, viz. Of Divinity, Hicræno, Greek, Law and Phys-
ics; the readers of which lectures are called in the uni-
versities, Regiæ professores.

Regnum ecclesiasticum. In some countries former-
ly, the clergy held there was a double supreme power, or two kingdoms in every kingdom; the one a Regnum ecclesiasticum, absolute and inde-
 pendent upon any but the pope over ecclesiastical men and caues, exempt from the
fees of magistrates; and the other a Regnum profane, of the King or civil magistrate, which had subordination and submission to the ecclesiastical kingdom: but these usurpations and abridgments, were extinguished here by King Henry VIII. 2 Hale's Hist. P. C. 334.

Regulator. (Registrator, Fr. registraur.) Signifies him that makes acts or volumes, on purpose to enhance the prices; for he is bought by great, and he is bought by re-
tail, came under that notion. 23 Ed. 3. flat. 1. cap.

But that now name denotes him that buys and sells any ware or volumes in the same market or fair, or within five miles thereof, whereof see the flat. 5 Ed. 6. c. 14, 5 Eliz. 12. and 13 Eliz. 25. In the Civil law such is called Dardanianus, a Dardano quecumque falsis au-

ter libellis, ubi falsa ratione, orter derogator, orter derogatus, orter derogatus were comprehended under the word forguiier. 3 Inst. 195. and as such shall be punished. See 5622. Hallig.

Regula, The book of rules or orders, or statutes in a religious convent: Sometimes for the martyrology or obituary.

Regulæ, (Regulæ) Are such as profest to live un-
der some certain rule; such as monks or canon regulars, who ought always to be under some rule of obedience.

Regulæ, Subregulæ, Are words often mentioned in the councils of the English Saxons: The first signifies, the other the vicecences. But in many places they signif-
ify a certain irregular, as in the old book in the archives of Worcester cathedral. Canon, edid. 1729. See Subregulæ.

Relatorius, fænsimun, quando vicecenses ille son-
ne fænsimun de major parte quam debetur, Is a writ judicial, Reg. justic. fol. 13, 31. There is another writ of this name and nature, f. 54.

Relativation, (Relativatio, mentioned in flat. 25 H. 8. cap. 21.) Is one of those exactions mentioned in that statute to be claimed by the pope hereafter in England, and seems to signify a bull or breve, for remaking a spiritual person to exercise his function, who was formerly disabled, or a offering to former abiltty. Cowell, edid. 1727.

Religion, (Religion) Is an act done in the form of law, 18. of the 43d of Charles II. by which the first and second act of the 3d of James II. is declared to be absolutely void and inoperative. 44. of the 3d of Charles II. In which Charles II. did lay the foundations of the presbyterian constitution in the Church of England.

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REL

But if any stranger has done a trespass in the mean time, he who recovered, after the reversal of the recover

able, shall have an action of trespass against the tref-

pollars; 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 trefpollars, who are

wrong-doers, the law shall not make any constraint of any

sort; but they shall be cut off, and deprived of all the

law, by a fiction and construction, should do wrong to

him that recovered by the first judgment; for as the law

charged the recoverer with all the meane profits, so it

gives him remedy, notwithstanding the reversal, against

trespassers in the manner; for otherwise it would, by

construction of relation, discharge the recoverer, and

degenerate him that recovered with the whole. And so be he that

reverses the judgment shall have an action for all the meane

profits against the recoverer, and the recoveror shall have

action of tresspass against the tresspiller. 13 Rep. 21, 22.

in Nimitz. Minor's case.

Relation shall in no case conclude the King. Arg.

Part. Cales 74. in the case of The King v. Badin.

The King shall not be over-reach'd by relation; as in

the case of money of an outlaw paid into the Exchequer

when the outlawry is revived; now by relation the

money was the property of the party all the time, but

for relation does not over-reach the prerogative of the


in the Bankers cafe.

If a gift is made to the King by deed introlled, and

before impleiment he grants away the land, the grant is

void; yet the impleiment by relation makes the land to

pass to the King from the beginning. Arg. 3d. to 2d. pages.


'Tis a general rule, that relation shall not do wrong to


M. C. B. in the case of Thompson v. Lasch. See 18 Fin.

Abr. 291, 292.

Relator, (n.) A reliefer, or teller; also applied to


Relief, (Reliefus.) An instrument whereby ef
tates, rights, titles, entries, actions and other things,

are sometimes extinguished, sometimes transferred, some-
times abridged, sometimes enlarged. Writ. Syntal. part

lib. 2. In 509. And there is a relief in fact, and a

relief in law. Perkin's Grants 71. A relief in fact, in

which is the very words expressly declare. A re-

lease in law, is that which doth acquit by way of con-

sequence or instrument of law; an example whereof you

have in Parkes v. Jopra. How there are available and

how not, for a sufferer at large. lib. 3. c. 3. Gow.

A release is the giving or discharging of a right of ac-

tion which a man hath or may claim against another,
or that which is has; or it is the conveyance of a man's in-

terest or right which he doth a thing to another who

had possession thereof, or some citate therein. 4 Bac.

Abr. 203.

Relieves are distinguished into express relieves in deed, and

those arising by operation of law; and are made of

lands and tenements, goods and chattels, or of actions

titled, 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

there be difficked of lands, or dispossessed of goods, and

the party grants or releaseth all actions, he may notwithstanding land into his

lands, or retake his goods, the right and property being

still in him, though he be dethel'd himself of his

neglig. 1659. 4 Co. 17.

So where a man has given means to come to his rights,

he may relish either; 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 to

it. 2 Co. 153. 46a. Hereof the relieves were confirmed with much nierey

and great tithefors, and being considered as the deed of

grant of the party, were according to the rule of law

trongestl against the reliefer; they now receive

such interpretation as these grants and agreements do,

and are favoured by the judges as tending to repose and


149. 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 reliefer, and the manner of recital in a deed,

and then general words follow, the general

words shall be qualified by the special words. 1 Med.

99. 1 D. Raym. 235.

1. Of the words and ceremony required in a release; and

how far a covenant, agreement or a dissipation 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.

How for a possibility or contingent interest may be

released.

Littleton tells us, that the proper words of a release are

remittit, relaxatis & quietum delect, which have all the

same signification. Lord Coke 105, Renunciare, acquies-
L. E. L.

...circuity of action; for if in such case the party should not contrary to his covenant, the other party would recover the whole of the damages which he sustained by the other's failure; but if the covenant be, that he will not sue till such a time, this does not amount to a release, nor is it pleaded in bar as such, but the party hath remedy only on his covenant. - 22 Sept. pl. 86, 871. 1 Rel. t. 939. Rob. 187; 2 H. 33, 199; 2 R. 14, 213; 2 Salk. 573, 5. Carth. 210.

As in debt upon an obligation, the defendant pleaded that the plaintiff by indemnity, &c., did covenant that he would not sue to the bond before Michaelman, intending thereby that this was a full and absolute release of the obligation, and conveyance of the same to the servant the court adjudged, that it only amounted to a covenant, and that for breach thereof an action of covenant would lie. Cro. Eliz. 332. 1 And. 357. 1 Rel. t. 939. Den. v. Jeffries.

So if the obligee covenants and grants to and with the obliger, that during 99 years he would not put the bond in suit, it is only a covenant on which an action will lie, but it cannot be pleaded in bar of the bond. Carth. 63. Salk. 373. Alifki v. Serinf-rays, and see 1 Sib. 46. S. C.

If two are jointly and severally bound in an obligation, and the obligee by deed covenants and agrees not to sue one of them; this is no release, and he may not witholding sue the other. Cro. Car. 551. March 95. 2 Salk. 575.

But if two are jointly and severally bound, a release to one discharges the other. 1 Id. Rym. 470.

Covenant with B. to pay him 301. for the use of the wife of A. only for her life; in covenant brought on this, and breach assigned that there was so much of the 301. 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 for the payment of money, more than was contained therein; it was covenanted and agreed, that so long as A. and his wife did cohabit, the payment of the 301. should cease; and aver, that they did cohabit for the time the said arrear became due, and pled this in bar of the first agreement; and though in this case there could not have been any great mischief in confuting the deed pleaded a defeasance or release, there being no other parties to the deed; yet as this was a sum in gross, and the covenant temporary and not perpetual, it was adjudged no bar. 2 Vent. 217.

Gawden v. Draper. 1 Id. Rym. 631. S. C. cited per Hilt, and admitted to be good law; but he said, that if the covenant had been a rent, he should have been of opinion that the second deed would have amounted to a grant of the rent for the said time; and see 1 Lea. 152.

It seems agreed, that a will, though fealed and delivered, cannot amount to a release, because it is am- bulatory and revokable during the testator's life; and by reason of the executor's constant requisite to every disposi- tion of a personal thing by will, and the injury that might accrue to the testator's creditors, were a will to be allowed to operate as a release. Still. 286. 1 Vent. 39.

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 ad- vantage could be taken hereof by plea. 1 Sid. 421.

Pidgeon v. Herr. jn.

But it had been held in equity, that though a will cannot ensue as a release, yet provided it were explicable to be the intention of the testator that the debt should be discharged, the will would operate accordingly; and Lord Cramer said, that in such case it would be plainly an absolute discharge of the debt though the testator had sur- vived the legatee. 1 Per. Will. 85. Ellis v. Daventry. 2 Kern. 521. S. C.

So another case it was held by Lord King, that a release by will can only operate as a legacy, and must be affixed to pay the testator's debts; and if a debt so released by will be afterwards received by the testator him-
before the day by a releas of all aecions and demands. 

In 174. 2 Rel. Air. 290. 

So if a man devises a legacy of 26l. to J. 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 demiss it is not releas'd, but there must be special words for the purpose. 17 C. 51. in Langley's case.

A releas of all demands does not discharge a coven-

anc not broken at the time; as where a leffor, on payment of 60l. to him by the leased due on a judgment, releas'd to him all demands; and it was ad-

judged that this did not releas a covenant for repairs theretofore due but a releas of all covenants would have releas'd the covenant. Henarcy v. Field, &c. T. 173. 2 Rel. Air. 407. N'g 123. For the difference when broken or not, see Dyer 217. Lit. Rep. 6. 8 Allis 34. 3 Lcnm. 60. 10 C. 51. 5 C. 71. His case. Co. Lit. 292. 8 C. 153. 1 Ind. 8, 64. If a leflee for years grants over his efftate by inadver-

tence retiring rent during the continuance of the efftate, and afterwards releas to the affigne all demands; this flall discharge the rent, for he had the freehold of the rent in the time. Witon v. Bic, 2 Rel. Air. 408. T. Air. 456. Bridg. 132. 2 Rel. Rep. 10. Poph. 136.

If so leflee for years grants over by indenture all his efftate, refering a rent during the term, and afterwards releas to the affigne all demands; this flall releas the rent, for though he cannot have an action to demand all the efftate, yet this is an efftate in him of the rent, and he is under a covenant to pay the rent, and all arrearages after, he shall claim it as a duty accrued from the said efftate; and it shall not be said that the duty arises annually upon the taking of the profits, but this had its commencement and creation by the refervation and contract, which was before. 2 Rel. Air. 408. in the peace of 1969.

If there be leflee for years rendering rent, and the leffor grants over the reverion, and the leflee attorns, and after leflee affigns over his efftate, and after the affigne of the reverion releas all demands to the first leflee, yet this flall not releas the rent, for that there is neither privyty of the efftate or contract between them after the affignement; but if the releas had been made to the affigne, it had extinguished the rent. Cellin v. Harding, 2 Rel. Air. 408. Mor 544. Co. Eiz. 606.

If he who has a rent-charg in fee releas to the ten-

nant of the land all demands from the beginning of the term, and after the releas; this flall discharge all the rent, as well that to come as what is palt. 20 Alr. pl. 5. 2 Rel. Air. 408.

It is said by Littleton and Lord Coke, that by a releas of all demands a rent-service flall be releas'd; but this it is said to be intended of a rent-service in groves as a feignory, Lit. fct. 510. Co. Lit. 291. And therefore in the case of Hen v. Hanfon, where in covenant brought on a covenant in a lease for years to pay the rent re-

feved, the defendant pleaded releas by the plaintiff of all demands at a day before the rent in question became due; the plaintiff replied that the releas was in per-

formance of the contract, and that the covenant was no more releas'd hereby than the reverion itself was; and that this construction should be rather prevail, as it was not the intention of the party to releas this rent: But Twifden contra, he said, that in releas and deeds when words are heaped up, the party who takes to the advantage may take the strongest word and put on the face, 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, speter politiam edebis legibus, non leges politiae: 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 said, there is a continual demand to twist lord and tenant; and in this case there is a tenure between the leflee and him in reverion; and the reason why the reverion is not touched by this releas is, be-cause it can work the leflee only by way of extinguishment, and not by way of pulling an interest; but it was adjudged at Jefra. 1 Lev. 107. 125. 1 Ed. 141. 1 Kib. 499. 570. Hen v. Hanfon.

The plaintiff declared upon a lease for years, redcedand 30l. at Lady-day and Michaelmas, and affigns for a breach non-payment of a year's rent due and ending at Lady-day 1689. the defendant pleaded a releas dated the 18th day of November, 1687, of all demands on account of which judgment was given for the plaintiff; for the growing rent not due, which is incident to the reverion, is not discharged, though the first half year's rent, which was a duty demandable, was releas'd; but here the releas be-

ing pleaded as a bar to all, which it is not, the plea is naught, and judgment must be given for the plaintiff. 2 Sai. 578. Stephens v. Smeai.

3. What shall be releas'd by a releas of all actions and suits.

A releas of all actions discharges a bond to pay mo-

ney on a day to come; for it is Debtorum in praefentia, quin omnis Jesum in futuro; and it is a thing merely in action, and the right of action in him that releas'd, though no action will lie when the releas is made. Co. Lit. 292.

But a releas of all actions does not discharge a rent be-

fore the day of payment, for it is neither debitorum nor Jesum in futuro at the time of the releas; nor is it merely a thing in action, for it is grantable over. Co. Lit. 292. If a man has an annuity for a term of years, for life or in fee, and he before it be behind releas all actions; the this flall not releas the annuity, for it is not merely in action, because it may be grantable over. Co. Lit. 292. 1 Bald. 178. Co. Eiz. 857. Mor 113. But such releas shall releas the arrearages incurred before. 39 H. 6. 43. 2 Rel. Air. 404.

If one releas omnes querelas et liquas, this is as large as a releas of all actions, and releas all causes of action, tho' no action be then depending. Co. Lit. 292.

By a releas of all manner of actions, all actions as well criminal as real, personal and mixed, are releas'd. Co. Lit. 287.

A releas of actions real is a good bar in actions mixed-

ed, as affile, affin, and menial actions, for wants, goods, impoits, av-

nity; and fo is a releas of actions personal. Co. Lit. 284. But not after the grantee has made his election. 1 Jasui 215.

In an appeal of robbery or felony, a releas of all ac-

tions personal will not bar, because an appeal, in which the appealee is to have judgment of death, is higher than a personal action; but a releas of all manner of actions, or of all actions criminal, or of all actions mort-

tal, 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 Hanl. P. C. 196. And in an appeal of malum a relaper of all actions personal may be pleaded, because damages only recovered. Co. Lit. 288.

A releas of all actions is regularly no bar to an exe-

cution, for execution is no action, but begins when the action ends. Co. Lit. 292. 8 Co. 153.

Also a releas of all actions does not generally releas a writ of error, for it is no action, but a comminution to the justices to examine the record; but if therein the plaintiff may recover, or be referred to any thing, it may be releas'd by the name of action. 2 Joyl. 40. Tito. 209. Co. Lit. 288. But a releas of all actions is a good bar to a fore feque, 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 replying a releas of all actions is a good bar, for the avowant is defendant, though in some respects he is plaintiff. 2 Rel. Rep. 75.
REL

By a release of all sues a man is barred of a writ of eject.

Lawt 110.

So by a release of all sues a man is barred of execution, because it cannot be had without application to the court, and proof of the party, which is his fret. Ca. Lit. 76. 28. 15. 15.

If a difficulty releas to the diffidtor all actions; this is no release of his right of entry, for when a man has several means to come at his right, he may release one of them, and yet take benefit of the other. Ca. Lit. 23. 8. 4.

So if a man by wrong takes away my goods; if I relea-

to him all actions personal, yet by law I may take the goods out of his possession. Ca. Lit. 286. Inst. 57.

If a man releas all actions, by this he shall releas as well actions which he has as executor, as those in his own right. Ca. Lit. 26. 2. Rel. 354. 2. Lom. Rel. 15. 7. 5. Cited by Penet, and paid by him to be clearly so, unless there was an action of his own for the release to work upon.

If a man releas all quarrels; a man's deed being taken 

from strength against himself, it is as beneficial as all actions, for by it all actions real, personal and mixed, are released. Ca. Lit. 292.

4. How far a possibility or contingent interest may be releas'd.

It is a general rule in our books that a mere possi-

bility cannot be releas'd, and the reason hereof is, that a release supposeth a right in being, and it was thought to countenance maintenance to transfer choses in action, possibilities and contingent interests. Ca. Lit. 48. 2. Cro. Eliiz. 552.

Hence it is held, that an heir at law cannot releas to his father's difficulty 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 alien the lands. Lit. lett. 446. Ca. Lit. 265. 2. 10 Ca. 51.

Bridg. 76. S. P.

So if the conveyer of a flatrate releas to the conveyer all his right to the land, yet he may afterwards sue execution, for he has no right to the land, but only a possi-

bility. 1 And. 133. Ca. Lit. 265. 2 Rel. Abr. 405.

Cro. Eliz. 552.

So if a creditor releas to his debtor all the right and title which he hath to his lands, and afterwards gets judgment against it, he may extend a money or 

fame land, for he had no right to the land at the time of the releas, and the land is not bound but in respect to the person. 2 Med. 281. 2 Lev. 215.

So if the plaintiff releas all demands to the bail in the King's Bench, and afterwards judgment be given against him for executing against the bail, for that at the time of the releas there was only a possi-


and see the cafe of Harrison v. Husley. Mor. 852.

So if A. recovers in trefpass against B. in B. R. and B. brings a writ of error, pending which A. releas to B. all executions, and after the judgment is affirmed and 

new damages given to A. for the delay upon the flau-

tare of 3 H. 7. this releas shall not bar A. to have execution of those damages, because he had no right to have execution, nor to any duty at the time the releas was made. 2 Rel. Abr. 404. Cro. Jac. 337. 1 Rel. Rep. 11. Child v. Duranti.

A lease to the husband and wife for life, the re-

mainder to the survivor of them for twenty-one years; the husband grants it over, and though he survived, yet the grant was held void because it was contingent. Poph. 5. 10 Ca. 51. Hutt. 17. Roym. 146.

If the next predecesor to a church be granted to A. and from that date the right of entry, for when a man has several means to come at his right, he may release one of them, and yet take benefit of the other. Ca. Lit. 23. 8. 4.

So if a man by wrong takes away my goods; if I relea-

se to him all actions personal, yet by law I may take the goods out of his possession. Ca. Lit. 286. Inst. 57.

If a man releas all actions, by this he shall releas as well actions which he has as executor, as those in his own right. Ca. Lit. 26. 2. Rel. 354. 2. Lom. Rel. 15. 7. 5. Cited by Penet, and paid by him to be clearly so, unless there was an action of his own for the release to work upon.

If a man releas all quarrels; a man's deed being taken 

from strength against himself, it is as beneficial as all actions, for by it all actions real, personal and mixed, are released. Ca. Lit. 292.

As the case of Cafe v. Moore, where one pooleff'd of a 

term of years dev'd it to A. for life, remainder to B. and made A. the execut. B. dev'd this remainder to C. and died in the life-time of A. and in order to defeat C.'s right of interest, A. affignd his term to a third person. And it was decreed by Lord Chancellor Ellrmore, that A. the execut. and deviér. for life was a true grit for B. and should not be at liberty to defeay this remainder, but that the execut. should preferve the lease, so as it might go according to the will, with the performance whereof the executer was intrusted. Mor. 866.

So in the case of Goring v. Bickerjoff, where the 

truft of a term was dev'd to A. for life, remainder to B. It was agreed by all, that B. might affign over the truft, which drew a trust of a term in remainder may be transferred over by deed. 1 Clon. Ca. 44.

One pooleff'd of a term for years devid it to A. for 

life, remainder to B. in the life-time of A. dev'd his remainder to j S. who devd it over; and the question was, Whether A. (the deviér. for life) being dead, the device of J. S. should have the term, or whether it should go to the adминистр. de bontt non; and it was decreed for the devicee of J. S. and the ad

министр. de bontt non of B. was direstd to affign over the term to him. 1 Peer Will. 573. Hinnd v. Jyl.

And in the case of Thodek v. Duffy in the house of Lords, March 1729-30; it was (inter alia) determined that a possibility of a term is assignable for a good con-

ideration.

It is laid down in Hau's cafe, that a duty uncertain at 

first, which upon a condition precedent is to be made certain afterwards, is but a possibility, which cannot be releas'd. 5 Ca. 707. 2 Med. 281.

As a nimine payable on a rent which cannot be releas'd till the rent is behind, as the non-payment of the rent makes the nimine parse a duty. Tobil 215.


So if a man covenants to pay 10 l. on the birth of a 

child, the covenantor cannot be releas'd of the 10 l. in respect of the possibility of the child being chargeable in contingency whether such child will ever be born or not. Bar. 137. Nicce v. Shefford.

So if an award be, that upon the plaintiff's delivering the defendant by a certain day a load of hay, the defend-

ant shall pay him 10 l. in this case the 10 l. cannot be releas'd before the day, for it relrs merely in possibility and contingency, whether the money shall ever be paid
for it becomes a duty on the delivery of the bay only, and not before. Vol. 215.

In debt upon a bond against the defendant as administrator, &c. the defendant pleaded a release, whereby the plaintiff, reciting there were several controversies between the defendant and him about a legacy and the payments of rents to the widow of the oblige, and the right, title, interest and demand of, in and to the personal estate of the intestate; and on demurrer this was held to be no plea; and a difference was taken by Ch. J. Hubs, between a release of all demands to the person of the obligor or administrator, and a release of all demands to the personal estate of the intestate; 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 seized. Saiz. 575. 2 Ed. Raym. 758. Topham v. Tullor.

The relator, B. in consideration that he will sell to his certain merchandise at such a price, that his friend does not pay it at the fall of St. Michael next ensuing, he himkild will pay it; and before Michaelmas A. releases all actions and demands to him who made the promise; this shall not release the assignment, for till the appellee to the defendant, he shall hold; and before he shall have paid it or not, and till default of payment by him, the other is not bound to pay; and for it is a mere contingency till Michaelmas, which cannot be released. 2 Rob. ab. 527-8. Bis. v. Ave.

For more learning in this subject, see 4 Bsc. Abr. and 10 I. 136.

Religion, (Religiosis) A banishing, or sending away; as obftrusion is a forests of the realm for ever, so religion is taken for a banishment for a time only. Ca. l. 21st. j. 133

Relief. (Raleaion, but in Domestick, Relatioiis, referred) to the subject of Commonalty, or the tenant, holding by knights service, grand seignior, and other tenure, (for which homage or legal service is due) and being at full age at the death of his ancestor, paid unto his lord at his entrance. Mag. Chur. cap. 2, and 31 Jns. 1st. 1. Bracton. lib. 2. cap. 36. affirms, That it is a legal relief, Quod baronius quod jacet facta per ante oriet sse eftiue, relevat in manum baronum, & propter falsam relationem, facienda est ab beseide quem prostatis quod dicitur relevium: and Britton. c. 69. Of this also speaks the Grand Cuthwary of Normanby, cap. 34. Sine de verbor. signifie; verb. Relatioin, faith, Relief. (Romanius, from the Latin relationis, which word that takes relief and full age is given by the tenant or vaflal that is of perfect age, after the expiring of the wardship to his superior lord, of whom he held his lands by knights-service, that is, by ward and relief: for by payment thereof he relieves, and as, it were, nuptah again his lands after they were taken down into his superior's hands, by reason of wardship, &c. See him at lar. See 31 Car. 2. cap. 24. Relief is otherwise thus explained, vis. A feuatory or beneficiary estate in lands was at first granted only for life, and after the death of the vaflal it returned to the chief lord, for which reason it was called sefud dominium, or an estate immediately after the death of the tenant; afterwards these feuatory easies being turned into an inheritance by the connivance and affent of the chief lord, when the possessor of such an estate died, it was called baronius baronii, i.e. it was fallen to the chief lord, to whom the heir having paid a certain sum of money, he did then relieve baronius baronii out of his hands; and the money thus paid was called a relief. This must be understood after the conquest; for, in the time of the Saxons, there were no reliefs, but kettus paid to the lord at the death of his tenant, which in those days were horses, arms, &c. and such tributes were called the relief; for after the conquest, they were deprived of both of them. Numanby; and instead thereof in many places, the payment of certain sums of money was substituted, which they called a relief, and which continues to this day.

Relatives. (Relatives demæ) It is likewise sometimes called benefice and Vol. II. N°. 129.

ancient relief, which is inherited by some law, or becomes due by custom, and doth not depend upon the will of the lord, &c. In a charter of King John, mentioned by Mist. Paris. pag. 178. Si quis comitem vel baronem, fimul radiationem, fine altum suum tenendum de nobis, in perpetuum militarem, nostrum fuerit, & eum dicere in hæresi justa bene administrator, similem et semper previam aconversationem simul a beneficium per antiquum relevium: And what that we may read in the laws of William the Conqueror, cap. 22. and of Henry I. cap. 14. and before that time in the laws of Constantine, cap. 97. &c. The relief of an earl was eight war-horses with their bridles and saddles, four lances, four horses, four shields, four pikens, four foremost hunting-horses and a palfrey, with their bridles and saddles: The relief of a baron or thane was four horses, two with furniture, and two without, two swords, four lances, four shields and an helmet, arm bruises, and fifty marks in gold. The relief of a squire was his master's horse, his times, first, horse and livery, which he had at his death. The relief of a villain or a countryman was his beast best, &c. Cowell, ed. 1727.

Religion (Religiosis) Is virtue, as founded upon reverence of God, and expectation of future rewards and punishments, a system of Divine faith and worship as it was in the times of the ancients. Religion is, therefore, directed towards the Divine nature, whereby we are enabled and inclined to serve and worship him after such a manner as we conceive most acceptable to him, is called religion. Wllkins. All blasphemies against God, as denying his being or providence, all profane feaoting at the Holy Scriptures, or denying any part thereof to contempt or ridicule, all impurities in religion, as falsely proceeding to extraordinary commotions from God, and terrifying or abusing the people with false denunciations of judgments, &c. All open lewdness gosply scandalous, such as was that of those persons who exposed themselves on the people in a balcony in Covent-garden, with most abominable, and horrid impieties, against the several persons of this king, 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 corpulz infamous punishment as to the court in derision shall seem meet, according to the heinousness of the crime. 1 Henk. P. C. 6. 7. Seditious words in derogation of the establishment religion are indelible, as tending to a breach of the peace. 1 Hatch. P. C. 7.

The six articles of religion established, 33 Hen. 8. c. 14. 32 Hen. 8. c. 5. Commissions to be granted concerning religion, 30 Hen. 8. c. 26. 34 & 35 Hen. 8. c. 1. Repeat of the former acts relating to religion, 1 Ed. 6. c. 12. seg. 7. Images in churches, &c. to be destroyed, 34 & 32 Ed. 6. c. 10. Repeat of the several acts of Ed. 6. 1 Mar. plr. 2. c. 2. 174. Proclamation to the subjects, to fulfill the articles. 37 Ed. c. 11. Articles to be subscribed by protestant dissenting teachers, 1 Will. & M. c. 18. seg. 8. 10. Oath of Christian belief to be subscribed by Quakers, 1 Will. & M. c. 18. jnt. 13. See Blasphemy, Verrcy, Soverelozu- nis, Papists, Quakers, Reformat, Securere and Stainarnismen.

Religious honours, (Religiosis demæ) Are honours set a part 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 exercise of religion. See Nutzia Monastia, or A brief History of the Religious Houses in England and Wales by Thomas Tanner, Octavo, who in an alphabetical order of counties, has accurately given a full account of the founders, the time of foundation, the titular saints, the order, the value and the dissolution, with reference to printed authors, and manuscripts that preserve any memoirs; this book is fresh and judicious; Preace of the institution of religious orders, &c. Cowell. ed. 1727. See Menalitae.

Religious men, (Religiosis) Are such as enter into a monastery or convent, there to live devoutly. In ancient deeds of fale of land, we often find the vendor re-7 M strained.
Remainder, (Remoteria), is an estate limited in lands, tenements or rents, to be enjoyed after the expiration of a particular estate. For example, A man may leave to one for the term of his life, and to the remainder to another. Lit. cap. 1. This remainder may be either for a certain term, or in fee simple, or fee-tail, as appears by Beaco, tit. Don and Remainder, sect 245, and Glanville, lib. 7, cap. 1. The difference between a remainder and reversion, according to Spelman, is this, That by a reversion after the apportioned term, the estate vests in the remainder, or in the reversion, as the proper fountain; whereas by remainder it goes to some third person, or a stranger. Coddell, 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 while it can take effect when the particular estate determines, it is void. Co. Lit. 49, 143, 2 Co. 51. More 344. Vang. 269.

1. Of the several kinds of remainders, as distinguished into remainders voided, or in contingency and abeyance.
2. Of craft remainders, or those arising by implication and construction of law.
3. Of what things a remainder may be made, or limited.
4. What words are sufficient to create a remainder.
5. Of the continuance of the particular estates, and when the remainder is to commence.
6. Of the several kinds of remainders, as distinguished into remainders voided, 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 heir of J. S. who is then dead, this is a good remainder, and vests prefey 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 Boll will vest the remainder in him; for the being heir, and coming within the description 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 Real. Abr. 415. 2 Co. 95, 102. Plow. 56.

When the remainder is void, the remainder is of three sorts: First, When it is a limitation to one not in esse, for in that case, if the remainder-man never does come to being, 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 dedication, or otherwise, in his lifetime. Thirdly, When there is a limitation preceded, or something to happen in case of A. forfeiting it, this time, before the determination of the estate; as a remainder to commence when J. S. shall live, England is in Rome. In the case of Pererture v. Perciute, 1545. 2 Per. Lea 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 into a case of contingency, that is, if J. S. survive being in Rome. But in such a case, though the life of the lessor or donor is 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 perfectly vest in the person intended; and in the right heirs of J. S. it cannot, because he cannot have heirs during his life; for if it be not, how can he have any contingent estate, in order to take it; therefore it is in the mean time in abeyance or expectancy, to vest or not, as the case 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 or otherwise, in the life of J. S. then such remainder is become totally void, and can never vest, but the estate continues again to the lessor or donor, as if no such limitation in remainder had been; and he becomes tenant to the præcept, and is obliged to do the services; and though J. S. be soon after, yet his heir can have no benefit by it, nor any capital of the remainder when it fell, 1 Co. 135. Co. Lit. 378, a. 2 Co. 51. 2 Real. Abr. 415. Poph. 28, 556. Poph. 72, Mar. 720. 3 Co. 20. 10 Co. 50. Raym. 145. Pollock. 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 J. S. may never have the remainder. So if a remainder be limited to A. son of B. in tail, or to wife of D. where in truth there is no such A. or E. though B. has a son called A. or D. marries one E. yet they can never take the remainder; because if there be such perfeons as the words of the gift import, there the remainder ought to vest in them presently, and they will never after be capable of taking it; but if there be no such person then in esse, none who come within that description after can lay claim to it, because the limitation was present to such persons; but a remainder limited primumgenius filius, or propter hereditatem majus of A. or progenies hereditatis de jurene purge partum, or feprtium partem de A. or to the right heirs of A. then such B. or in esse, or to the wife that A. shall marry: there are good remainders, and shall vest when such persons come in esse as are within the description; because here appears no present regard for any person in particular, and therefore if they answer the description at any time before the determination of the estate; they will become sufficient; or 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. 68. 2 Co. 51. Hib. 33. Mar. 104. Dury 372. 2 Loll. 210. 1 Rol. Abr. 25.

A. makes a lease to B. for life of B., and after the death of A. to remain to D. and his heirs; this remainder is contingent, and cannot vest presently, for if A. survives B. it is void; and because otherwise the operation of the lease was to 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 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 tenore being at an end, all that depended thereon ceases too, and A. can never after be eligible to vest all the estates at once from the sefior, 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 that livery had taken out from him, and then they can never take effect but by a new livery, and this is the reason of the common case, that one cannot give lands to another to begin
begin after his death, because being to make levy presently, if that cannot operate presently, it can never operate at all, for it is a contravention to give lands to one after another and make levy between them; and therefore this presently, and yet by words to refrain that operation to a future time: but in the principal cause, where A. dies first, there is no interruption of the levy, for B. had an estate for life by virtue thereof, and before that determination, the same levy, which carried the remainder, was in being; and now, if the devise upon A.'s death direct and let it be, or bring down the remainder to B. and his heirs. 10 Co. 85.

If a lease be made to A. 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 life there is an estate, having title to the estate, is still 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. 10 Co. 20. 10 Co. 85.

If a lease be made to A. for life, remainder to the abbot of D. and his fecchores, though the abbot be then dead, so as there is then no abbot at all, yet the remainder shall be good if an abbot be made before the death of D.'s devisee, and chapter, prior and convent, etc., though there be then no mayor, dean or prior. So of a remainder to the bishop of D. parson of D. or other sole corporation and its fecchores; these remainders not being limited to them by name specially, but to them generally, whenever comes within the description before the death, the determination of the particular estate, is capable of taking by virtue thereof, are good remainders in abeyance.

But if there be no such corporations at the time of the limitation, then the remainders are totally void; and none created atter, though by the same name, can take in their stead, to which a pactum was then penned to make such corporation. 10 Co. 26. 3 Rep. 332. 1 St. 51. 10 Co. 50. 10 Co. 104. 1 Rol. Rep. 222. 2 Bull. 275.

2. Of crosf remainders, or slops arising by implication and construction of law.

A. having issue five sons, his wife being enfeint, devised two thirds of his lands to his four younger sons, and the child in ventre sa mare if he were a son, and their heirs; and if they all die without issue male of their bodies or any of them, that the lands shall revert to the right heirs of the deviser; by this devise the heirs of John were determined as a moiety of three parts, and the remainder in tail to each other, and no part shall revert to the heir of the devisee till all the younger sons be dead without issue male of their bodies. 1 Sm. 302.

But where one having issue three sons, 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 that if all his said children shall die without issue, then all the said moiety shall remain and be to his wife and her heirs, and it was held by three judges, that upon the death of one of the sons without issue the wife might enter, and that here there were no crosf remainders from one son to another, because being devised to them severally by express limitation, there shall be no greater crosf to them by implication; but Lea Ch. J. doubted; and Deveridge J. said, that though perhaps crosf remainders may be by implication where there is a devise to two several persons, yet not if of remainders to one and to a mayor and commonalty, therefore shall this be allowed; and upon this the three judges held, that there shall be no crosf remainders by implication. 1 Sm. 302.

3. Of what things a remainder may be made, or limited.

As to estates of inheritance, there can be no doubt but that the grantor, having a perpetual and durable interest.
treat in the estate, may share and divide it, or grant as many remainder, over as he thinks proper. 4 Bac. Abr. 442.

But as to personal goods and chattels, it was formerly held, they in their own nature were incapable of any limitation over, being things transitory, and by mere accidents subject to be lost, destroyed, or otherwise impa-

tient, 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 good or chattel, whether before or at a month or minute, was a gift for ever, and an absolute disposition of the entire property. 4 Est. Devise 13. Pitz. 521. Dyer 741. 9 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 thereby, 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 devolved to him for life, had therein included all that the deviser had a power to dispose of; but now such remainders over are allowed under the name of execu-
tory devises, and are established both in courts of law and equity, and are held not to extend over a term as to make estates unalterable. 4 Bac. Abr. 234.

Also a distinction was formerly taken between a de-

vice of a personal chattel to one for life, with a remain-
der over, and of the use only; that in the first case the devisee for life had the absolute property, but not so in the second, for that the devisee did not have the property of the goods, but only a special interest in them, so that these still remained 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. Pitz. 521. 1 Rol. Abr. 610. Mason 106. Owen 331. 1 Co. 21a. 2 Term. 245. 1 P. Wili. 1, 503. 651.

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 ap-
ppears at the same time that the whole was intended to be disposed of from the executors. 1 P. Wili. 666.

A being mollified for a term of ninety-nine years, de-

vice by B, for life, and after to B's heir, was held to be in effe, for their lives if the said term should so long continue, and all the seven persons being dead, and the term con-

tinuing, 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 vestment it to his repre-
sentatives. 1 Sid. 231. 1 Ed. Raym. 325. Ayres v. Falthorne.

A farmer devised his flock (which consisted of corn, hay, cattle, &c.) to his wife for life, and after her death to the plaintiff. It was objected, that no remainder can be limited over of such chattels as these, because the use of them is to spend and consume them; but the Maller of the Rolls held 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 slaves, the defendant was only to answer the value of them at the time of the sale; and an account was decreed to be taken accordingly. 4 Abr. Eqn. 361. Hayle v. Bar-
rider.

A gives his fitter, by will, to 10 l. and directs that such part of his personal estate, as his wife should leave of her substantial, should go to the fitter; whatever the wife has not employed in that way, shall go over and be account-


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 by the remainder-man to compel security, &c. or to have the money, &c. after

die the death of the first devisee, but it shall go to his executors or administrators; for this devise gives the ab-

olute property of a personal estate, as the like devise of a real estate before the statute De densit gave the ab-

olute fee, upon which no limitation could be made further, and the heirs of the person who received the representation of the real estate, so are the executors to take the personal estate, and this is not within the statute De densit, but remains as at Common law. 2 Fort. 349. 2 Term. 600. 1 Salk. 156. Abr. Eq. tit. Devise.

If A. devise that his goods and furniture shall remain in his house to be enjoyed according to the title of the

will, by those intituted 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, common, eftovers or any other interest or profits in oils, wherein the grantor had the absolute property to him and his heirs, may be granted with remainder over. Pitz. 379. 9 Co. 45, 97.

So if one hath the office of park-keeper, forester, golder, filliff, &c. to him and his heirs, he may grant those offices to one for life, remainder to another for life, &c. for many majors constit in femes, and as they are creatable over in fee, so may they be granted in fee from one to one for life, with remainders over. 1 Co. 49. 1 Abr. pl. 201.

It was formerly doubted, whether there could be a re-

mainder of a rent de novo, that is, whether a man feised of lands in fee, could therewith grant a rent-charge to one for life or years, remainder to another in fee, or in tail; and this doubt arose from the rents not having any existence before it was created, and consequently no re-

version could be left in the grantor, out of which the re-

mainder was to arise; but it hath been adjudged, and is now settled, that such grant in remainder is good, the grantor having the absolute interest in the estate, out of which it is to arise, and his intention given it being for the whole, out of which the letter estates are carved.

But if he grant such rent for life or years, to one with-

out going further, he cannot after grant the reversion thereof to another, because he has no reversion in him. 2 Rol. Abr. 415. 2 Co. 70, 79. 2 Fort. 240. 1 Lev. 114. 1 Sid. 252. 2 Sid. 577. 2 Lev. 1225. 2 Abr. 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 inheri-
tance in the office, or to the execution of it, but in point of law he is the owner. And in the case of God the

King was a diversity existed between offices in fee existing, and such as were granted only for life, which being as a new thing created, might, as a rent de novo, be granted to commence in futuro. 4 Moun. 275. 1 Ed. Raym. 57. Cath. 320. Salk. 465. Comb. 334. King v. Kemp.

If one be created Baron, Vizcount, Earl, &c. by patent, and after, in the same patent, the fame 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, too he had fill the same power of appointing one in feccion to take it, as he had of grar-
nings the same.

A licence to sell wine may be granted to one for life, remainder to another for life; because by such licence not only an authority paffeth, but an interest, by way of re-

sultion, to that which was the subject before it was prohibited by statute. 1 Lev. 320. Bridg. Rep. 175.

4. What words are sufficient to create a remainder.

The word remainder is no term of art, nor is it neces-

sary to create a remainder. So that any words, sufficient to shew the intent of the party, will create a remainder; because such estates take their denomination of remain-
der from the mere act of the grantor in granting the estate, 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 be defin'd to B. for
A. by indenture makes a lease to B. for 40 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 claims, and C. enters thereon, and pays the payments and rents of the cafe, it seems clear, that this is no remainder at all to C. for flights, pretently it cannot be vested by reason of the lessor's life interposing, and therefore is no remainder vested. Secondly, As a contingent remainder it cannot be good, because then it ought to have a particular estate in respect of that, but at a future time, viz. upon the death of the lessor, and there is no contingency at all in the case, for it is to take effect at all events, upon the death of the lessor, be it before or after the end of the term, and therefore it can be no other than a future interest termi. to begin after the death of the grantor, which grants it, which being but for years it may well do; because it ensures by way of contract, and though the grantee 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 moves, First, That the grantee had an interest; Secondly, That the interest was not contingent, but as a remainder, and five years non-claim after the death of the grantor, not being couched, devolved or turned to a right; thirdly, That though the grantee 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 cannot derogate from his own grant, or avoid his own words. Roy. 140. Corbet v. Stone.

5. Of the continuance of the particular estates, and when the remainder is to commence.

If a man makes a lease 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 do any service or render any rent. Plow. 25. Roy. 144. that the law is nice to an instant. 1 Ed. Roy. 316.

A. feized in fee, devies his lands to B. seckton for his brother C. for life, remainder to the first of B. in tail, and so to all his other sons in the same manner successively, to D. and so to all his remaining heirs in tail, and so to all his other sons in tail successively, and dies; B. enters and dies, leaving his wife enfite with a son, then D. enters as in his remainder, and six months after the son is born; and all this matter being found specially, was adjudged in C. B. for D. against the common law for a contingent remainder to the son, and he not being born at the time when the particular estate determined, this became void; secondly, being the next in remainder, and having entered before the birth of the son was in purchase, and therefore shall not lose his estate by a son born after, and this judgment was affirmed in B. R. for they held it only to be a contingent remainder, and not an executory devise, or springing remainder, for that would introduce a perpetuity not to be barred by a common recovery, because 'twould be the same to all the other sons; but here it being a contingent remainder, and not happening in time, 'tis gone for ever; and they relied on Archer's case; but it was adjudged on the first day. First, That the facts could take, it must be by way of remainder, they not being parties to the deed, and then it must be as joint-tenants, which could not be by reason of the word succeedee. Secondly, that they could not take in succession, for the uncertainty whole estate or interest was to commence first. Hul. 213. & 27. Windmire v. Hibbert.
still the son was born; but all the judges were much dissatisfied with it, and did not change their opinions, but blamed the judge who permitted it to be found specially where the law was to certain and clear. 4 Mod. 259. 3 Leev. 408. 1 Sick. 327. Corv. 309. Rev. v. Long. 16. Provided, that this is only the case with such-born sons and daughters, to whom the remains are limited in contingency, shall take in the same manner as if they had been born in the father's lifetime, though no estate be limited to trustees to prefer and support such contingent remainder, which was made by reason of this clause, and of the fact that it is a case of law here.

For more learning on this subject, see 2 Bac. Abr. and 18 Vin. Abr. tit. Remitter.

Remanences. Remainst. Are void used in the register of Domesday, to signify pertaining or belonging. As De cardis qui habi maioris remansunt, &c. Of the men or tenants belonging to this manor. Cowell, ed. 1727.

Remitter in cuthod. Entry of an action in the marshal's book, by remon. ejected, where a man is actually in custody, is a good commencement of an action in B. R. 3 Sick. 170.

Remedy, (or remission) Is the action or means given by the law for recovery of a right; and whenever the law gives any thing, it gives a remedy for the same: there is a maxim. Lex semper debit remedium. Stud. Compan. 177, 179. Remedies are favouredly extended, and sometimes to be had without action or applying to the courts of justice, viz. by accord and agreement of the parties; but more generally, whether the goods are taken away, taking diriffaes for rent; entry on lands, to regain possession, &c. Ward's Inf. 528, 529, 530.

Remembrances of the Exchequer. (Remembarers Seaxord.) Are three officers or clerks there; One called The King's Remembrancer, 25 Edw. cap. 5. The second, The Lord Treasurer's Remembrancer, it lies, to put the Lord Treasurer, and the tell of the Judges of that court, in Remembrance of such things as are to be called on, and deal in, for the King's benefit. The third is called The Remembrancer of the First-Fruits, 5 R. 2. flat. 1. cap. 14, 15. Thee in 37 El. cap. 4. are called Clerks of the Remembrancer. The King's Remembrancer renders his official address to all the different 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 out processes for the breach of them. He writes processes against the collection of customs, fabulides 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 flattening of debts, has delivered into his office all manner of indentures, fines and other evidences whatsoever, that concern the affuring of any lands to the crown: He every month, in the course of animism, reads in open court the statute for election of sheriffs, and gives them their oaths; and he reads in open court the oath of all the officers of the same when they are admitted, before many other things. The Lord Treasurer's Remembrancer makes processes against all sheriffs, escheators, receivers and bailiffs, and on their accounts. He makes processes for fines and extents for any debt due to the King either in the pipe, or with the auditors; makes process for all such revenue as is due to the King, by reason of his tenures: He makes a record, whereby it appears, whether sheriffs or other accountants pay their rent due at Exeter and Winchester. He makes another record of sheriffs and others, with their days of prefix. All extents of fines, fines and amercements, fees in any courts at Winchester, or at the alias or felions, are certified into this office, and are by him delivered to the clerk of the extants, to write processes upon them, &c. There are brought also into his office, all the accounts of eunuchs, controllers and other accountants, to make entry thereof on record. The Remembrancer of the First-Fruits takes all compositions and bonds for first-fruits and tenths, and makes processes against such as do not pay the same. Cowell, ed. 1727.

Remembrancers to make copies of indices and inquisitions certified into their offices; and to enroll and certify to the approvers of the great roll such debts as are due from the tenant or alienor thereto, &c. 13 & 14 Car. 2. cap. 11. fol. 4, 6, 126.

Remitter. (Remittore, to relieve.) In a legal sense it involves a restitution of one that hath two titles to lands or tenements, and is foiled of them by his latter title, which, proving defective, he is restored to the former and more ancient title. Cowell. N. & B. fol. 149. Dyre fol. 68, 52.

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 will adjudge him in by force of the elder title; because the elder title is the more fure and worthy title; and then when he is adjudged in by force of his elder title, it is faid a remitter in him; for that the law does admit him to be in the lands by the elder and furer title; as, if tenant in tail discharges the tail, and after he discharges his discontinue; and he dies feised, whereby the tenements remain to the heir or devisee, inheritance of by force of the tail; in this case, this is to him whom the law makes his heir, 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 defect, then the discontinue might have a writ of entry for defraudation in the per against him, and the tenement left as his when he shall recover it. &c. But inasmuch as he is in remitter by force of his tail, the title and interdict of the discontinue is quite taken away and defeated, &c. Lit. fol. 659.

Regulary to every remitter there are two incidents, viz. an ancient right and defensible estate of freelands together with the liberty of them. &c. 149.

Tenant in tail, infecon, his heir apparent in the tail within age, and another jointureman in fee, and the tenant in tail dies; the heir in tail is in remitter as to the one moiety, and as to the other moiety he is put to his writ of formendon, &c. Lit. fol. 603.

So if the discontinue after the death of tenant in tail makes a feoffment in dower, he being within age 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 fee-simple, and after the remitter is adjudged by operation of law; and therefore can remit him but to a moiety, 34. 3.

But it tenant in tail inter felix 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 feoffment, &c. But such folly cannot be adjudged in the heir being within age at the time of the feoffment, &c. Lit. fol. 604. For where the right of poHilion is derived from the right of property; there if the proprietor re-obtains the right of poHilion by agreement, he must hold it under such agreement; for the other having the right of poHilion, and转让ing it to the proprietary, such proprietary must take the right in the same manner as the other was convicted; for it is his own folly and laches, that he contracted about such right of poHilion, and not affecH his property in a proper action; but when he has contracted for such right of poHilion, and such right of poHilion is transferred, he must keep to the terms of the bargain, and he leaves all the right in the feoffor he has not contracted. 1 T. & R. 12. G. Tref. 1711, 13.

The woman is the tenant, the husband a tenant, who aliens to another in fee, the alliance lets the same land to the husband and wife for their two lives, saving the reversion to the teller and his heirs; the wife is in her remitter, and she is feid in fact in her demesne as of fee, as she was before; because the taking back of the estate of the husband, and not of the wife; so no tolly can be adjudged in her being covert.

And in this case the teller has nothing in the

reversion, 3
enuation, for that the wife is feided in fee. Lit. 566.

If tenant in tail infi his ilife, being within age, and
is wife in fee, and dies, this is a remitter to the ilife
definitely, by the death of tenant in tail, tho' some
have thought to the contrary. Cro. Lit. 351a b.

For more learning on this subject, see 18 Vin. Abr. tit.
Remitter.

Remittitur, The entry in B. R. on a writ of error's
shaving in the Exchequer chamber, C. is called by
this name. See C. E. 4.

Removal of party persons. See Settlement of the
Petty

Remover, Is where a cause or suit is removed out of
one court into another; and for this there are divers
writs and means. 11 Rep. 41. And remaining of a cause
the fending it back into the fame court, ouf of which
was called and fent for. See Halsbury's

Remant, or rather remnant, (mentioned in flat. 32 H.
8. c.) Denying, from the French Renier, negare.

Remder, from the French Rendre, r. redire, retri-
ber. Signifies with us the fame thing. For example,
this word is used in levying of a fine, which is either
for payment of any thing or is granted or rendered back again
by the cognize to the cognizor; or double, which
contains a grant or render back again of some rent, com-
mon or other thing, out of the land felf, to the cogni-
Also there are some things in a manner that lie in render,
that may be taken by the lord or his officers,
when they happen, without any f. made by the tenant,
it is a cheafs, and the like; and some that lie in render,
that is, may be delivered or arraved by the tenants, as
rent, reliefs, heriots and other services. Bid. feft. 426.
Alfo some services conflit in feifance, fome in render.

Partis Reitations 566.

Rennegotiate, When we corruptly call Rennegate, is
one who was a Christian, and afterwards negat Chriftian:
It is mentioned in Howen anno 1192. by the name of
Remus, viz. Ec cap. in equinonius lll 24 pagans, & amon
tenues qui quanum Chriftianum fuerat &Damnam Chriftum
segregaverat.

Renevant, (Remont, to renew) Renewing or
Growing again. The pardon foon one for tithes, to be paid
if any renonvate, but his bafe being only for labour
and ravel, would not renew. Cro. Cor. part 2. fol. 430.

Rent. (rededit in Latin, from redendo, because, as
Feoff tells us, Retrari & quantum redidit. Lib. 3. c. 14.)
A rent, is the price of money, or other commodities
felling yearly out of lands, or tenants. Phel. 55. fol.
132. 138. 141. Brown's cafe; of which there are three
sorts, viz. Rent-ervice, rent-charge and rent-rect.

Rent-ervice is, where a man holds his lands of his lord
by fealty and certain rent, or by fealty, and certain
rent. Lit. leb. 2. cap. 12. Or that which a man
making a lease to another for terms of yeares, referves
yearly to be paid him for them. In the terms of the law,
this reafon is given for it, because it is at his pleafure
either to dilate, or bring an action of debt. Rent-
charge is, where a man makes his effaye to another,
by deed indented, either in fee, or fee-tail, or for term
fore the court decreed the defendant to pay the rents
and for subj ected his perfon, which possibly might not be
liable by the deed that created the rent. 1 Chanc.
120. Coles v. Faubu. But fee flat. 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.

4. Statutes concerning rent.

Stat. 32 Hen. 8. c. 37. fett. 1. The executors or
administrators of tenants in fee-simple, tenants in fee-tail,
and tenants for term of life, of rent-ervices, ren-
tcharges, rent-fecks, and feec famine, unto whom any such
rent or fee farm shall be due, shall have an action of debt for any arrears against the tenants that ought to have been paid thereout of their rent, and 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 upon the land charged with the payment; so long as the said lands continue in the fee or the purchase, in the land charged with the payment, to have paid the rent or fee farm, or in the seisin or possession of any other person claiming only from the same tenant by purchase, gift or descent, in like manner as their tenant might have done.

Sect. 2. This act shall not extend to any such manor or lordship in Wales, whereby the husband and wife, husband, or any of 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 distrain for the same arrears upon such lands out of which the said rent or fee farms were arrears, in like manner as if such perfon, by whole death the estate in the said rents and fee farms was determined, had been in full life.

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 distrain for the same arrears upon such lands out of which the said rent or fee farms were arrears, 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. 4. If any such 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 death of such person, the said tenant, 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 rent or fee farms were arrears, 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. 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 upon the land charged with the payment; so long as the said lands continue in the fee or the purchase, in the land charged with the payment, to have paid the rent or fee farm, or in the seisin or possession of any other person claiming only from the same tenant by purchase, gift or descent, in like manner as their tenant might have done.

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 recoveries after the determination of the lease.
Sect. 5. All persons shall have like remedy by diftres, and
impounding and selling the fame, in cafes of rents-fock, rents ofaffe, and chief rents, which have been anfe-
ced or paid for three years within the space of twenty years
before the first day of this act, in favour of parliament or shall
be hereafter created, as in cafe of rent reverted upon
lease.
Sect. 6. In cafe any felle shall be surrendered in order
to be renewed, and a new felle executed by the chief
landlord, the new felle fhall, without a surrender of the
ffeed, or the payment of fuch new felle, be intifled to the rents
and duties, and have like remedy for recovery thereof, and the under-lessees
fhall hold and enjoy the tenements, as if the original
feck had been surrendered. And in cafe there shall have
the fame remedy, by diftres or entry, for the rents and
duties relegated by fuch new felle, fo far as the fame
exceed not the rents and duties relegated in the felle out of
which fuch under-lease was derived, as they would
have had in cafe fuch former felle had been continued,
or the under-lessees had been renewed under fuch new
felle.
Sect. 7. Nothing in this act fhall extend to Scotland.
Stat. 11 Geo. 2. cap. 19. [See the fift nine feclions of
this act under tit. Diftres} fett. 10. It fhall be lawful for
any perfon lawfully taking any diftres for rent, to
impose or fecure the fiftres on fuch part of the
premifiles, as the prefident thereof fhall think
fit, and to apprehend, fell and difpofe of the fame upon
the premifie, as any perfon may now do off the premiffes,
by virtue of 2 Will. & Mar. flat. 1. cap. 5. or of 4
Geo. 2. cap. 28. And it fhall be lawful for any perfon to
come and go to and from fuch part of the premiffes, to
view, apprehend and difpofe of the fame upon the
account of the purtfher; and if any pound-bracch or
reccufs be made of goods diftrained for rent fecured
by virtue of this act, the perfon aggrieved fhall have like
remedy as in cafes of pound-bracch or reccufs by the faid
fature.
Sect. 14. It fhall be lawful for the landlord, where the
agreement is not by deed, to recover a reafonable fatis-
fication for the tenements occupied by the defendants, in
an action on the cafe for the use and occupation of what
was held; and if in evidence on the trial any parole de-
mife, or any agreement not by deed, wherein a certain rent
was reserved, fhall appear, the plaintiff may make
the fame thereof as an evidence of the quantum of the dam-
agers.
Sect. 15. Where any perfon for life fhall die before or
on the day, on which any rent was refunded upon any de-
mife which determined on the death of fuch tenant for
life, the executors or administrators of fuch tenant for
life may in an action on the cafe recover of the under-ten-
teens, if fuch tenant for life die on the day on which the
fame was made payable, the whole, or if before fuch a
day, then a proportion, of fuch rent, according to the
time fuch tenant for life lived of the full year or quar-
ter, or other time, in which the faid rent was growing
due, making all just allowances.
Sect. 16. If any tenant holding tenements at a rack-
rent, or where the rent referred fhall be full three
fourths of the yearly value of the premifile, who fhall be
in arrear for one year's rent, fhall defert the pre-
miffes, and leave the fame uncultivated or unoccupied,
and if no fufficient diftres can be had to counteravail the
arrears; it fhall be lawful for two juftices of peace (hav-
ning no interest in the premifile) at the require of the
landlord, his bailiff or receiver, to go up and view the
fame, and to affix on the moft notorious part notice in
writing, what day (at the diftance of fourteen days at
least) is fixed for the landman to begin to take a fecond view; and if
upon fuch fecd view the tenant, or fome perfon on his
behalf, fhall not appear and pay the rent in arrear, or
there fhall not be fufficient diftres upon the premifile, the
juftices may put the landlord in possifion, and the
fale to fuch tenants, as to any domestic therein contained
only, fhall become void.
Vol. II. No. 121.
Sect. 17. Provided, That fuch proceedings of the ju-
tices fhall be examinable into in a summary way by the next
juftices of affife; and if they lie in London or Middle-
ex, by the judges of the courts of King's Bench or Common
Pleas; and if in the counties palatine, by the judges there-
and in Wales, before the courts of the juftices of the peace;
and the judges thereof; and in cafes of rent and diftres,
who are impowered to order refolution to be made
to fuch tenant, together with his costs to be paid
the landlord, if they fhall fee caufe for the fame; and in
cafe they fhall affirm the act of the juftices, to award
coffs not excepted for the appeal.
Sect. 18. In cafe any tenant fhall give notice of his
intention to quit the premifiles, and fhall not accordingly
deliver up the poiffession at the time in fuch notice con-
tained, the faid tenant, his executors or administrators,
fhall pay to the landlord double the rent which he fhould
otherwise have had.
Sect. 20. [See fett. 19. under tit. Diftres] Provided
that no tenant fhall recover for fuch irregularity afo-
feid, if tender of amends hath been made by the party di-
fraining, or his agents, before action brought.
Sect. 21. In actions of trefpass, or upon the cafe,
brought againft perfonS intitled to rents or services, their
bailiffs or receivers, or other perfonS, under them, or
lenty upon the premifiles chargeable with fuch rents or ser-
vice, or to any diftres or feafure, fale or defaffal, of any
goods thereupon, it fhall be lawful for the defendants to
plead the general issue; and in cafe the plaintiffs become
nonfatis, &c. the defendant fhall recover double coats.
By flat. 2 Geo. 2. cap. 40. fhall be prejudiced by payment of rent to a grantor before notice of
the grant.
And by flat. 20 Geo. 2. c. 52. fett. 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 cafes a
demand is necessary.
Here the material difference is between a remedy by re-
entry, and a remedy by diftres, 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 pre-
vious to the entry, otherwise it is torinous; because fuch
condition of re-entry is in derogation of the grant, and
the efafe at law being once defeated is not to be reftored
by any subsequent payment; and it is presumed that the
tenant is there relying on the premifiles in order to pay
the rent for the prefervation of his efafe, unless the con-
trary appears from the defcription of the leffor being in
land, and therefore unless there be a demand made, and
the tenant thereby, contrary to the prefumption, appears not
to be on the land ready to pay the rent, the law will not
give the leffor the benefit of re-entry, to defeat the
tenant's efafe, without a wilful default in him, which
cannot appear without a demand hath been actually made
on the land.
Ca. Lit. 201. b. Hob. 207, 331. 5 Co. 56. Dyer 51. Pio. 70. 7 Co. 56. Mound's cafe, Vaugh. 32.
So if there had been a connine paene given to the leffor
for non-payment, the leffor must demand the rent before he
could be at law on the penalty; or if the claufe had been,
that if the rent were behind, that the efafe of the leffor
should fcare, and be voided; in these cafes there
must be an actual demand made, because the preffum-
pion is, that the leffor is attendant on the land to fave
his penalty and preferve his efafe, and therefore fhall not
be punitid without a wilful default; and that cannot be
made appear without a demand be proved, and that
it was not anfeid; and the demand in thefes cafes must
be made at the day prefixed for the payment, and al-
leged expressly to have been made in the pleading.
Hunt. 114. Hob. 207, 331. 7 Co. 56.
But where the remedy for non-payment of the rent is
by diftres, there needs no demand previous to the dif-
tres; for the defeaf fays that if the rent be behind, being
lawfully depandad, that the leffor may diltrain; but the
leffor, notwithstanding fuch claufe may diltrain when
the rent becomes due. So if it, if a rent-charge be gran-
ted to A, and if it be behind, being lawfully demandad,
that
not then a distress; he may dilate without any previous demand, because this remedy is not in derogation of the estate, for the distress is a pledge for the payment of it, and the very taking of the distress 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 distress, because upon the tender of the rent the pledges are immediately to be released, and therefore the taking of the rent has been settled in a reprieve; whereas in the case of reentry or of the penalty, the tenant is really injured either by the loss of his estate, or by 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 for a wilful default in this, which cannot otherwise appear than by the proof of a demand, which was not answered by the tenant. 

Hib. 207. 73. 85, 2 Rob. Abr. 426.

But this general dictation must be understood with these restrictions.

First. That if the King makes a lease, referring rent with a clause of re-entry for non-payment, he is not obliged to make any demand previous to his re-entry, but the tenant is obliged to pay his rent for the preservation of his estate, because it is beneath the King to attend his subject to demand his rent. 5 Co. 56. 4 Co. 73. 


This rent is not to be tendered to the Dutch lands though they be in the hands of the King, for the King must make a demand before he can re-enter into such lands; but this is by the 1 H. 4, which provides, that, when the Dutch lands come to the King, they shall not be under such government and regulations as the demesnes and possessions belonging to the crown. 


So if a pretend make a lease, rendering rent, and if the rent be arrear and be demanded, that it should be lawful for the pretend to re-enter; if the reversion in this case comes to the King, the King must in this case demand the rent, though he shall be by his prerogative enfranchised 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, referring rent, with a proviso, that the rent be in arrear for such a time (being lawfully demanded, or demanded in due form), and that the tenant shall be void; it seems that not only the patenue of the reversion in this case, but also 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. 


But if the King makes the lease where he need not make a demand, affinns over the reversion, the patentee cannot enter for non-payment, without a previous demand, because the privilege is inapplicable annexed to the person of the King. 4 Co. 73. Mar. 404. Cro. Eliz. 462. 

Dy. 87.

Secondly. Another exception is, where the rent is payable on a place off the land, with a clause that if the rent be behind, being lawfully demanded at the place off 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 dilate; in these cases, though the remedy be by distress only, yet the grantee cannot dilate without a previous demand; because here the distress and demand being not composite, but different acts, so are performed at different places and times, the demand must be previous to the distress; for the distress 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 staying at any place off the land, or of the person of the grantor) that then the grantee may dilate, there needs no actual demand, because here the distress and demand is but one composite act, the one included in the other, and all done at one time and place, viz. upon the land; for the distress 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 distress in its own nature is. 2 Rob. Abr. 426. Hib. 208, and see Dy. 358.

And there seems to be from the forementioned excepted admitted, that where the remedy was by way of distress for non-payment, that yet there needed no demand, if the distress was payable at any place on the land; because they locked 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 in its nature the same as if it had been payable upon the land; and therefore it seems that the tenant was there to pay it, unless it be overthrown by the proof of a demand, and without such demand, and a neglect or refusal thereupon, there is no injury to the leflee, and consequently the estate of the leflee ought not to be defeasis. 

Plate. 70. 4 Co. 73. 


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 preemption in his favour in this case; because, by dilinquent with such demand, he might put himself under the necessity of making an actual proof that he was ready to tender and pay the rent. 

Dyer 68.

There is another exception when the remedy is by distress, 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 distress, because where the tenant has thrown himself ready on the day by the tender, he has done all that in reason can be required of him; for it would put the tenant to endless trouble to oblige him every day to make a tender; being altogether uncertain when the leflee will come for his rent, when he has omitted to receive it the day which he himself has appointed the leflee to pay payment and receipt; wherefore as the leflee must expect the leflee, and he ready to pay it at the day appointed for the payment of it, or else the leflee may dilate for it without any demand; so where the leflee has lapsed the day of payment, and was not on the land to receive it, he must give the tenant as much time as he before he can dilate for it; for the tenant shall be put to no trouble where it appears that he has omitted nothing on his part. 

Hib. 207. 2 Rob. 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 to make the service 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 demand, as well as the leflee on the tender on the land. 

Hib. 207.

But if the tenant had tendered the rent on the day to the person of the leflee, and he refused it, it seems by the better opinion that the leflee cannot dilate for that rent, without a demand of the tenement of the tenant; because the demand ought to be equally notoriety to the tenant, as the tender was to the leflee. 

Hib. 207. 2 Rob. Abr. 427.

So if the services by which the tenant holds be performances, fealty, &c. the demand must be of the person of the tenant, because this service is only performable by the very person of the tenant; and therefore a demand, where he is not, would be improper. 

Hutt. 13. Hib. 207.

Again, if the rent be feck, and the tenant be ready at the last instant of the day of payment to pay the rent, where there is to receive it, he must afterwards demand it of the person of the tenant on the lands before he can have his saife; 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 saife, after such tender on the day, without a demand of the
Ren, the tenant might be made a defirer, and damages for the defirer laid upon him, with no 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 right to it by reason of his tenure for the rents; 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 faid on which the rent is payable, demand all 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 defirer of the rent, the grantee may have an affifaxe, and by that shall recover all the arrears. Cro. Cas. 508. 7 Cr. 57. Hob. 207. 2 Rol. Ab. 437.

But if there has been neither a tender of the rent, nor a demand of the grantee on the land, then the grante 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 still obliged to answer the legal demands of the grantee, which is well made upon the land, before any final demand be made by the grantee 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 defirer, for which the grantee may have the land re-entered and recovered. Dyer 67, 2nd Ed. 229, 230.

If a lease be made referring rent, and a bond given for performance of covenants and payment of the rent, the leffer 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 payable in the same manner and place, as if there had been no bond given; and therefore is subject to the former rules and distinctions as to the demand. Cro. Eliz. 332. Cro. Cas. 76. Hob. 8.

If there be several things demised in one lease, with several reparations, with a clause, that, if the several yearly rents are 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, that then it shall be lawful for the leffer, into such of the premises, whereon such rents being behind or are referred, to re-enter; these are in the nature of distinct demises, and several reparations; and consequently there must be a discretion in the court to determine the whole estate demised. Ivagh. 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 case was by marriage settlement with power to make leaves for twenty-one years, so long as the leffer, his executors or assigns 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 leffer; because the estate is limited to continue only so long as the rent is paid; and therefore for the non-performance according to the limitation the lessee may have the land made to a woman dum fida fortis, this is a word of limitation which determines his estate upon her marriage. Ivagh. 31, 32. Trefigran v. Cooteys of Baltinglos.

Note: It seems the better way for the leffer to have a clause as re-entry for non-payment of the rent, than a clause that the lease shall be void for non-payment; because the rent be paid in the same manner and in the same time, and non-payment by the leffer does not avoid the lease; because there must be an actual entry to determine it to which, as it is said, there must be an actual demand precedent; so that in this case an actual demand does not determine the lease, but only puts it in the power of the lessee to make such entry, 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 leffer should unduly make an actual demand of the rent, and the leffer not be able at that time to pay it, he has thereby actually determined the lease; because there is no re-entry previous to determine an estate already void in iride. Yet even in this case, if the leffer for ten years makes an actual demand when the rent is in arrear, he may recover it by action of debt or dilinet, and so continue the lease, because these remedies, being not in defeasance of the grant, the leffer may pursue without an actual demand; but this observation is to be intended only of a lease for years; for in case of a lease for life only a demand can determine it without actual entry, though the clause be, that for non-payment of the rent the lease shall cease, and be void. Hob. 231. 2 Rol. Ab. 439. 2 Mid. 204. 3 Cr. 64. Pomian. café.

One makes a lease for yeares, rendring rent, payable at the most usual fauls in the year, or within a month after each of the faid days, at such place certain, with a provis, that if the rent be arrear by the space of a month after either of the faid days (being demanded in due form) that then the lease shall be void. If the leffer does not pay the rent at the faat-day, but sometime after within the month makes a tender of it at the place where the rent is due, it is rejected if this be tendered without a tender at the last infall of the last day of the month; but it seems not, because the leffer might have been there on the last infall of that day to have demanded it, and then for non-payment the lease will be void, and consequently such tender before the last infall cannot save it.

Dyer 87, 2nd Ed. 229, 230.

Nicholls prayed the opinion of the court in this case; leffer of titches (without any barn or soil) rendring rent, with a provis, that if the rent be not paid, that the lease should be void, whether the leffer should be obliged to seek the leffer, and demand the rent of him, or that the leffer ought to seek the leffer. And it was held, that the leffer ought to seek the leffer, and that the mortgage was ruled before that time, for he that needs, must blow the coals, and at the peril of the leffer the rent must be paid, otherwise the lease is gone. Nay 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-feting of the last day, as will be sufficient to have the money counted; but if the tenant meet the leffer on the land at any time before the last day for payment, and tender the rent, that is sufficient tender, because the time of the mortgage is to be paid indefinitely on that day, and therefore a tender on the day is sufficient. Cro. Lit. 202. a. Dalj. 44. Sav. 253. 4 Leon. 171. 1 Saund. 287.

If a lease is made, rendring rent at Mibusamur between the house of a farm and 48 in a place certain, with a clause of re-entry, and the leffer comes at the day about two in the afternoon, and continues to five, this is sufficient. Cro. Eliz. 15. Id. Cromwell v. Andres. The demand may be by attorney. 4 Leon. 479. But the power must be special, for such land and of such tenant. 288, 290. The demand must be proved by witnesses. Dyer 68. Must be proved to the precise fem de. 1 Leon. 305. Sav. 121. 25, 207.

If a lease be made, requiring rent, upon condition that if the rent be behind at the day, and ten days after, (being in the mean time demanded) and no diffrets to be found upon the land, that the leffer might re-enter; if the rent be behind the day, and ten days after, and sufficient diffrets be upon the land till the afternoon of the tenth day, and then the leffer takes away his cattle, and the leffer demands the rent at the last hour of the day, and the leffer does not pay it, nor is there any diffrets upon the land; yet the leffer could not enter, because he must no demand in the mean time between the day of payment and the ten days, which by the clause he was obliged to do. Cro. Eliz. 63. Woreijfer v. Ston.

As to the place of demanding rent, we must obverse the difference between a remedy by re-entry and diffrets; for
for when the rent is reserved, upon condition that if it be
behind, that the leffer may re-enter, in such case the
demand must be upon the most notorious place on
the land; and therefore if there be a hole 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 which reason no answer is to be taken in the place where the end
and intention will be fairly answered. Co. Lit. 153, 201.
2 Rot. Abr. 428.

And it seems the better opinion, that it is not ne-
cessary to enter the house, though the doors be open,
because that is a place appropriate for a tenant's peculiar
use, upon which he can enter whatever he will, which no perfon
is permitted to enter without his permission, and it is reasonable
that the leffer 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 leffer is sufficient, though it be open,
without entering; and therefore by a parity of reason
a demand by the leffer at the door of the tenant, without
entering, is sufficient. Dalby, 59. Co. Lit. 201. 1 And.
27. 3 Leon. 4. and see C. E. Elia, 15;

But when the demand is only in order for a default,
there it is sufficient, if it be made on any notorious part
of the land, because that is only to enable him to his re-
motive, 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, reffering rent, the demand ought to
be made at the gate, or some highway leading through
the wood, as the most notorious place. Co. Lit. 202.

If a rent-fock 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 diffilence, for which the grantee may
have his affife, 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. C. E. Elia, 324. C. C.
597.

But a demand of the perfon 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 perfon
is permitted to carry his wealth with him; and it is rea-
sonably supposed to be at his place of habitation, or upon
the land whence it is gathered, and therefore the demand
of the perfon 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 said, either to his
receiver for that purpose, or at the receipt of the Ex-
chequer, 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 revocation,
then the presentee must demand the rent upon the land,
because that is the place appointed by law, for reasons already
given, for a common reason to demand the rent. 4 C. C.

If a rent be referred, payable at the church of S. or
D. upon condition, it ought to be demanded at both
places, because the leffer hath his election to pay it at
either place; and therefore to take advantage of the con-
dition, the leffer must demand it in both places, where by
his holding agreement he has permitted the tenant to pay it.
2 Rot. Abr. 428.

So if 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 Rot. Abr. 428.

If a lease be made of two barns, rent per annum, re-
ferred to pay for non-payment, the leffer renders the rent at one barn, and the leffer demands it at the
other, yet the leffer cannot re-enter, because one barn
being as notorious, and consequently as proper a place as the
other for the payment, 'tis presumed that the leffer
was at the proper place for payment, 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 leffer did not demand it at the proper place, he
shall not take advantage of the condition. Dyer 239,
in margin.

But if fair and reasonable the above cafes and dif-
tinctions might have been, and however necessary the
knowledge of them, yet now, by that 4 Gen. 2. c. 28.
sec. 2. it is enacted, &c. See the first division of this title.
For more learning on this subject, see 4 & 5 Bac. Abr. and 18
Vitn. Abr. lit. Rent.

Rental, A rent wherein the rents of a manor are
written and set 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 ariling, and for what time, usually a year.
Compl. Court Rep. 475.

Rents of affife. (Redattius affiff, de affiffa, vel redatt-
itus affiffa.) The certain and determined rents of ancient
tenants paid in a fixed quantity of money or provisions
so called because it was affiled or made certain, and so
distinguished from redattius mobilis, variable rent, that did
rise and fall, like the corn-rent now referred to colleges,
Cowell, edit. 1727.

Rents re-enter. (Redattius reflitutus.) Are accounted a-
most the same as the former rents, to be told by the flatuate of 22
Car. 2. cap. 6. and are such rents or tenths as were an-
ciently payable to the crown, from the lands of abbies
and religious houses; and after their disfolution, not-
withstanding the lands were demised to others, yet the
rents were still re-entered, and made payable again to the
crown. Cowell, edit. 1727.

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 ruined at
the time of the lease made, and the leffer suffers it to fall,
he is not bound to rebuild it, and yet if he fell timber for
repairos, he is bound to do it at his own charge. 72
F. 54. 8. The certain and determined rents of ancient
tenants, that from and after the amendment and
repairos of the house by the leffer, he at his own
charges will keep and leave them in repair: In this cafe the
leffer is not obliged to do it, unless the leffer make good the
repairos: And if it be well repaired at first, when the lese began,
and after happen to decay; the

Reparations for laud, is a writ which lies in the
diverse places where there are three 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
willing, shall have this writ against the other two. F. B.
fol. 127. Of the various ues of it, see Reg. Orig. fol.
153.

Repaynum, A repay or meal, unum repayum, one
meal's meat given to fervile tenants, when they labour-

Repley, (from the French Rappel, revoquer) Signifies
to revoke, as the repel of a flulate is the revoking it.
Cowell, edit. 1727.

Repleader, (Repleitio) Is where the plea of the
 plaintiff or defendant, or both are ill, or animportan
tiffue joined; then the court makes void all the plea
which are ill, and awards the parties to replied. Termin.
de la ley. Cs. Ent. 152, 214, 244.

In debt against lefsee for years or months, the rent
demand is a debt due he assigned the term to
f. 3. of which the plaintiff had notice: issue 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 lefsee. And Tudey, 34., that if an important
issue is taken and verdict given, judgment there-
upon be given whether for the plaintiff or defendant, and cited
Replevin is a writ, and usually granted in cases of

diffs, and is a matter of right; so that if a man grants a
rent with clause of diffs, and grants further, that the
diffs taken shall be irrepleviable, yet may they be re-
pleved; for this was an agreement against the nature of a
diff, and no private person can alter the whole

courts of the law. 

that the avowant is in nature of a plaintiff, appears,
from, his being called an actor, which is a term in the
Civil law, and signifies plaintiff; 26ly, for his
being intitled to judgment de returnibus halendo,
and damnos as plaintiff; 30ly, from this, that the
plaintiff might plead in abatement of the averment;
and consequently such avowant must be in nature of an
actor. 

The avowant being in nature of a plaintiff, need not
avow his avowry with an ius paradium; & c.
more than any other plaintiff need avow his conquest. 

An avowant is an avowant, and he has not a prosecu-

for him more than any other plaintiff. 

But though an avowry be in nature of an action, yet
one tenant in common may avow for taking cattle dam-
age feasant. 

In Finch it is held, that when in the pleadings in
replevin 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 of late been exploded,
and it is now held, that as no lands can be recovered in
this action, it cannot with any property be considered as
a real action, though the title of lands may incidently
come in question, as it may do in an action of trespas,
or even of debt, which are actions merely personal. 

 Finch's law 316, and see Co. Rep. Plc. 109, in the

1. For what things a replevin lies.

2. Of the different kinds of replevin; out of what court,
thy ifue, and of the power and duty of the sheriff.

3. Of the pledges in replevin, and the proceedings against
them.

4. Of the original verity, and the Wiltherum in replevin.

5. Of the verity of second delinquency, and the writ De
propriate probanda.

6. Of the verity de returno halendo; of returns irreple-

5. In what manner the sheriff is to return and execute
such processes.

1. For what things a replevin list.

It is a general rule, that the plaintiff ought to have
the property of the goods in him at the time of the ta-
king; And not only a general property which every
owner hath, but also a special property, such as a perfon
has, who hath goods pledged with him, or who hath
the cattle of another to manser his lands, &c. is sufficient
to maintain a replevin, and in such like cases either par-
ty may bring a replevin. 

A replevin does not lie of things which are fora
nature, as corns, hares, monsticles, 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 of them, and he may
bring a replevin; and the general rule herein seems to
Replevins by plaint are made by the sheriff by force of the above-mentioned statute of Marli, by which he is directed, upon complaint made to him by the party that his goods or cattle are detained, to command a bailiff (which may be by parol or precept) to make delivery; and which plaint may be taken at any time, and, as well out of, as in court. 

3. Of the pledges in replevin, and the proceedings against them.

When the sheriff makes replevin, he ought to take two kinds of pledges; plagiis de praesenti, by the Common law, and plagiis de returnido habitua, by the statute of Wolm. 2. cap. 2. by which it is provided, "That if any pledges or bailiffs from thenceforth shall not receive the plaintiff's pledges for the purposing of the fact, before they make delivery of the defaulter, but also for the
the return of the bealls, if return be awarded; and if
any take pledges otherwise, he shall answer for the price of
the bealls, and the lord that disfairs shall have his re-
covery by writ, that he shall restore to him so many
bealls or cattle; and if the plaintiff be not able to retore,
he superior shall restore.

In the conclusion hereof the following cafes have
been ruled, according to their arguments:

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 value, viz. capable to answer
in value, but likewise sufficient in capacity; and therefore infants, femecovers, perfons
outlawed, &c. are not to be taken as pledges, nor are
persons politic, or bodies corporate. Ct. Lit. 145. 2
Hl. 340. 10 Cr. 102.

In replevin the sheriff does not return any pledges, and
after issue joined and found, it was held, that pledges being to
be found to the party of Heild; and the court held
they might, notwithstanding the said statute of W. and M. 2
before that statute the court might take pledges on the
omission of the sheriff; and a diversity was taken be-
 tween pledges for prossequing, which were at Common
law, and pro return habenda given; and therefore that
when there was a writ, or process, &c. to take pledges
in the court, that the sheriff might be subject to the
actions of the party, that yet the taking of pledges by the court did not make the judg-
ment erroneous. N. y 156. Trot. 4 Car. 1.

A replevin by plaint was sued in the sheriff's court in
London, and pledges were found de retour habenda; &c.
The plaint was removed according to their custom into
the mayor's court, and after into the King's Bench by
certiorari, and there ore of the certiorari being deman-
ded, the party declared in B. R. upon this a return was
awarded, and upon an slentig' return a fiere factis
went against the pledges in the sheriff's court of London.
Upon a demurrer the question was taken up for being
removed by certiorari; the pledges in the inferior court are
dicharged, or whether they remain liable to be charged by this fiere factis? 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 plea-
sure, and that he is not demonstrable, and cannot be non-
novited; but afterwards at another day it was adjudged,
that the pledges were not discharged. St. 24. 1
Sho. 421. 1. 2. M. 36. 11. 1. 1. 1.

In a case the plaintiff declared, that he disenned for 7 l.
107. rent, referred on a lease, and that the defendant
delivered the cattle without taking pledges; to which the
defendant pleaded, that the plaintiff in the replevin deli-
vered to him 3 f. 107. for pledges, which he accepted;
and on demurrer the court held, that pledges might be
lost, if he had good cause of awowy-
ry, and to be answerable for the amencement to the King,
if he be nonnovited; or if he be found against him, the
taking of money or a pledge was not lawful; and altho'
he might take money for pledges, yet he ought not to
accept less than the plaintiff's demands; on which account
the plea vicos; but they agreed,
that if the mayor had taken but one pledge, (if he
had been good enough) it had been well enough. Cro. Car. 446.
1 Fon. 278. S. C. Myfler v. Gray, Mayor oj Beverly.

But it had beemadjudged, that a bond taken by the
sheriff, conditioned that if the party applying for the
replevin in the next court should prosecute his action with
effic, and should make return of the thing reprieved, if return should be adjudged, and
fave the fiereff harmless, &c. was good in law, and
agreed to the intent of the statute of Map., which
requires pledges or forfeitis, of which nature the obligors
might have the condition of taking such pledges was
fai to be of antient use; and that in the old books
pleges signified the same as forfeitis; and that there be-
in a proper remedy on such bond, it differed from the
above case in Cro. Car. of taking a deposite or sum of
money; but the court agreed, that at Common law this
bond had been void, because it had been to save the fiere-
ff harmless in making replevin by plaint, which he could
not have done before the statute of Map. 1 Id. Raym. 278. 2 Lrot. 686. Blackitt v. Crifjop.

If in replevin in an inferior court, the condition of the
bond is, if he prosecute his fait commenced with effect in
the court of record, and do make return, it be adjudged,
return be adjudged by law, and it happens, that the
plaintiff hath judgment in the court below, which is after-
wards reversed on a writ of error in B. R. in such
case, unless the party makes a return, he forfeit's his
bond; for though he had judgment in the court below,
the party was not benefici of taking pledges of such
extent to the prosecution of the writ of error, which is
part of the fait commenced in the court below; and in
this case, the taking such bond was held to be lawful,
and fai to be common practice. C.ath. 428. 1

In debt executory, if 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 fave harm-
les to the Sheriff, &c. then, &c. the defendant after
oyer pleaded, that at the next county court, not till
die, he did not take the proess, nor was the writ
removed by recordari, and did fave harmless the fiereff,
but doth not say, that no return heald was adjudged;
and upon demurrer the court inclined for the plaintiff;
for the defendant should have faid, that no return was
adjudged at all; and though he prosecuted to the record-
dari, yet return heald might be adjudged in the court
below, and the condition goes to any adjudication of return.
Com. 228. Lane v. Foolk.

An action was brought upon a bond in replevin to pro-
fect his fuit with effect, and alfo to make return, &c.
The defendant pleaded, that E. G. did levy a plaint in
replevin in the court before the Reward of Woflington, and
that afterwards, and before the fuit was determined, viz.
on such a day, &c. E. G. died, per fed the fuit abated;
the plaintiff replied, quod bene &c. erurn bi, that E. G.
levied such a plaint against the Defendant, who imme-
diately afterwards exhibited an English bill in the Exche-
quer against the plaintiff in that fuit, and by injunction
hinder'd the proceedings below until such a day, &c. on
which the said E. G. died; so that he did not prosecute
his fuit with effect; and upon demurrer to this replication
the defendant had judgment; for per Hols, Ch. J. this
was a prosecution with effect, because there was neither a nonfuit of the plaint, nor an
action against E. G. Crith. 549. Duke
of Ormond v. Beryl.

In action upon a replevin bond common bail shall be
filed. 1 Saik. 99.

There are two forts of pledges, pledgi de prosequendo,
and pledgi de retour habenda; the pledges of prosecuting
were at Common law, but those de retour habenda were
appointed by W. and M. 2. cap. 2. by which statute an
action lies against the fheriff, if he omits to take pledges;
or if he takes those that are insufficient; for the party
may have a fiere factis against the pledges, where the fuit is
in any court of record; and though in the county court,
G. a frite factis will not lie against the pledges, because the
sheriff might have the condition of taking pledges of
this nature to be grounded on a record, yet there the party
may have a precept in nature of a fiere factis against the
pledges. 1 Ld. Raym. 278. per Hols, Ch. J. See Com. 1,
1. 2. Cum. 593.

An action on the cafe was brought against a fheriff 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 C. B. on
a writ of error brought in B. R. it was objected, that
An action on the cafe was not the proper remedy; 2dly,
Supposing such action lay, that there ought to have
been a fiere factis sued out against the pledges. As to
the firt court the held, that the party disclaiming has by
the statute of Woflington 2. an interest in the pledges,
and if the sheriff omits to take such, or which is the fame
thing, takes insufficient ones, he is aggrieved, and con-
sequently invited to his action. 3dly, That though a fiere factis
fictus may be brought against the plaintiff; yet it does not follow from thence, that an action does not lie against the sheriff; and such ficta fictus, which is only to certify the sufficiency of the pledge, is the less necessary in the present case, such insufficiency being left forth in the declaration and found by the verdict. 


And for the greater security of persons detaining for rent, it is enacted by Stat. 11 Geo. 2. c. 10. sect. 23, that sheriffs and other officers having authority to grant replevins, shall in every replevin of a deftreis for rent take in their own names, from the plaintiff and two sureties, a bond in double the value of the goods detained, (furnished and directed to be sworn to by the oath of one or more witnesses not interested, which oath the person granting such replevin is to administer) and conditioned for protecting the party with effect and without delay, and for returning the goods, in case a return shall be awarded, before any deliverance be made of the deftreis; and such sheriff or officer taking such bond, shall at the request and costs of the party, surrender the goods and return the bond, with all necessary costs and charges.

4. Of the original writ, and of the Withernam in replevin.

The original writ of replevin issue out of Chancery, and neither it nor the alias replevin are returnable, but are only in nature of a writs to impower the sheriff to hold plea in his county court, when a day is given the parties; but the plures replevin is always with this clause ex omnibus nullis significis, and it is a returnable process, E. N. B. 69. 72. Dut. pl. 313. 314. 1 Chit. 139. Salt. 410. that it is usual to take out the writ alias and plures at the same time. Dut. 58. 273.

If a plures replevin be returned in Michaelmas term, that the defendant claimed property, and after nothing is done, nor any appearance nor continuance till Easmer term after, at which term they appeared and pleaded, and judgment was given upon a writ (though no continuance was between Michaelmas and Easmer, yet this is not any discontinuance, because there is not any continuance till appearance; for the parties have not any express day in court, and where there is not any continuance, there cannot be any discontinuance. 1 Est. Abr. 485. Gritten v. Edsell.

The plures replevin superseded the proceedings of the sheriff, and the proceedings are upon, that and upon the plaint, as they are when that is removed by recordari, and though there is no summons in the writ, yet it gives a good day to the defendant to appear; and if he do not appear, then a new inflect, and then a captas. 1 Est. Abr. 57. Captas and process of outlivery lies in replevin; for when on the plures replietari faci the sheriff returns averia elengata, then a captas in Withernam illes, and on that's being returned nulla bona, a captas inflect, and so to outlivery. Captas and process of outlivery in replevin were given by 25 Est. 2. 17. & Mod. 84.

If on the plures replevin the sheriff return, that the cattle claimed to places unknown, sect. to that he cannot deliver them to the plaintiff, then shall issue a writ Withernam directed to the sheriff, commanding him to take the cattle or goods of the defendant, and detain them till the cattle or goods detained are referred to the plaintiff; and if upon the first writ Withernam a nullo be returned, there shall and alias plures replevin issue, and so to a captas and extens. F. N. B. 7. 3. 

The writ of Withernam ought to rehearse the cause which the sheriff returns, for which he cannot reply the cause or goods; so that it does not lie upon a bare jujgement, that the beasts are elengata. Est. F. N. B. 69. 73.

If upon the Withernam the cause are referred to the party who elengata them, yet he shall pay a fine for his contempt. 2 Lev. 15. 34. In Withernam may be worked, or if cows, may be milked; for the party has them in lieu of their own. 1 Lev. 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 for the expenses he has been at in maintaining them. Quin's, Gr. Abr. Elia. 3 Lev. 35. 33. Seire fiktus against an executus, declaring that where replevin was brought against his testator for a cow, and judgment against him de returna habenda, which was not executed, that he should lose the cause why he should not have execution. The executus pleads plena administratorem, upon which the plainti demurred; and Wilf. Justice Juld, 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 averia elengata, and a return be given, the sheriff may direct the testator to the parties upon such bond, as may be agreeable to justice; and such rule shall have the effect of a discontinuance.

W. defers replevin. He removes it 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 averia elengata, and then a Withernam was awarded and executed; and now the plaintiff comes and prays he may be admitted to declare, and prays a deliverance of the Withernam; and it was testified by the clerks, that upon the plaintiff's submission to a fine for not declaring, and that's being imposed upon him by the judges, he shall have delivery of the Withernam; and a fine of 31. 4d. being accordingly imposed on the plaintiff, he then declared, and had delivery. No 50. Whitt v. Hend, and fault, that the course of B. R. is contrary to that of C. B.

If upon an elengata returned the sheriff's cattle are taken in Withernam, yet upon the defendant's appearance, and pleading non suip, or claiming property, the defendant shall have his cattle again; and if they are claiming against the plaintiff; for if the property or taking in question, there is no reason that the plaintiff should have the defendant's cattle. 1 H. and R. 614. The Withernam is but meane proceds, and cannot be an execution, because it is granted before judgment. 1 H. and R. 614. and see Comb. 201. Sold. 392.

5. Of the writ of second deliverance, and the writ De proprietate probanda.

At the Common, if the plaintiff in the replevin had been nonlisted either before or after verdict, the defendant who distrained should have had return, but not its irreplevisible; so as the plaintiff after nonlist might have had as many repelevins as he would, which was vexatious and mischiefous; but remedy whereof the act of Wifjm. 2. 2. 2. referris the plaintiff from any more repelevins after nonlist, but gives a writ of second deliverance. 2 H. and R. 67.

And if in such writ of second deliverance the plaintiff be nonlisted, or if the plea be discontinued, or the writ abates, or it be prevails not in his fault, returns irreplevisible shall be granted. 2 Est. 341.

If defendant in replevin his return. awarded upon nonlist or none, upon which he finds a writ de returna habenda, upon which the writ returns averia elengata per querentum, and upon which a Withernam is awarded, and upon the Withernam the defendant has not cattle
RE P

The writ de proprietate probanda is an inquirit of office, and the sheriff is to give notice to the parties of the time and place of the executing of it. Dall. 89, 274.

If the defendant forthwith in reply to the return of the plaintiff, the plaintiff may have the writ de proprietate probanda without continuance of the replevin, though it be two or three years after, because by the claim of property the writ is determined. Mor. 403.

If the party who hath the cattle claims property, the sheriff cannot determine it without a writ de proprietate probanda; and then if the property be found for the party claiming it, it is but an inquirit of office, and the party who made theplaint may after a writ of replevin, to which property may again be pleaded. 7 H. 4, 46. Cam. 594.

If the plaintiff has property, and omits to claim it before the sheriff, he may notwithstanding plead property in itself or in a stranger, either in abatement or in bar, though it was formerly held, that property in a stranger could only be pleaded in abatement. Cr. Eliz. 475. Wils. 26. 1 How. 402. Salk. 5, 94. 6 Mod. 81.

In replevin the defendant in his answer pleads, that the beasts taken belong to a third person, and not to the plaintiff, and therefore prays a return; to which the plaintiff demurs; and on the averment of the plaintiff he might have recovered, and he might have recovered; but he hath a right against all others but the true owner, and the plaintiff by his demurrer hath admitted, that he hath no property in them. Comb. 477. Barrett v. Srimbaun. 4.

In tsrefpas for entering the plaintiff's house, and taking away his goods, the defendant justifies by virtue of a replevin out of the plaintiff's court in London, and a peremptorily demanded, the statute. 47 Hen. 6. 40. Dyer 280. Cr. Lit. 145.

A bailiff who makes conscience may have judgment of a return, and consequently a writ de return habenda is grounded on such judgment. Cr. Ent. 59. 6.

Of the writ de return habenda, of returns irreprovable, and in what manner the sheriff is to return and execute such process.

The return habenda is a judicial writ, that lies for him who has avowed the distress, and proved the same to be lawfully taken; or where, upon the removal of the plaintiff into the courts above, the plaintiff, whose cattle were replevins, made default, or does not declare or prosecute his action; and whereby becomes nonavit, 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. Cr. Lit. 145.

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The return habenda is not a returnable process, 2 Rol. Abr. 433.

If the defendant hath a return awarded to him, and he forthwith makes his own default, or does not declare or prosecute his action; and thereby becomes nonavit, 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. Cr. Lit. 145.

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In the plea to the writ, or any other plea be tried by verdict, or judged upon demurter, return irrepealable shall be awarded, and no new reaple shall be granted, nor any fecool deliverance made in the action of Hjefm. 2. 9-6. 2. Dyer 285. 

If any one joined in reaple the plaintiff doe 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 deliverance, as well if in a nonnull before declaration or appearance. 2 Leau. 49. 

If a man has return irrepealable, and a beat die in the pound, he may chy an new; so if the beat die before judgment. Hach. 61. 

If judgment irrepealable be awarded, the owner of the cattle may offer the arrearages; and if the defendant refi.ie do not deliver or diftraffe the plaintiff, the claim of antum; because the defendant is only in nature of a pledge. 1 Ld. Raym. 720. 

By the statute of Hjefm. 1. cap. 17. If the party who distrains, conveys the dreyts into any house, park, cattle or other place of strength, and refuses to suffer them to be reapled, the plaintiff may take the riffs com, and on requisition and refusal break open such house, cattle, &c, and make deliverance; and this was a necessary law so soon after the irregular time of H. a. 3. 2 Ify. 103. 3 Co. 93. Dail. Slh. 372. 

If the reaple returns, odd mandates baltoie libertatil Me, qui malum dedit mihi refopium, or that the bailiff will not make deliverance of the cattle, there are not good returns; for by the said statute of Hjefm. 1. the sheriff upon such return made to him by the bailiff, ought presently to enter into the franchise, and make deliverance of the cattle taken. F. N. B. 157. 

If a man sue a reaple in the county court without writ, and the forfeit return to the reaper, that he cannot have view of the cattle to deliver them, the reaple by isues of office ought to inquire into the truth thereof, and if it be found by a jury, that the cattle are elopement, &c, the sheriff in the county court may award a Witherum to take the defendant's cattle; and if the reaple will not award a Witherum, then the plaintiff shall have a writ out of Chancery directed unto the reaper liberating the writ of Witherum, and commanding him to make a Witherum, &c, and he may have an alias, and after a pluries, and an attachment against the reaple, if he will not execute the King's command. F. N. B. 158. 

If the reaple return, quod averia elingata ad loca ineignis, this is a good return, and the party must pursue his writ of Witherum; but if the reaple return averia elingata ad loca ineignis infra comitatus mercum, he shall be amerced, for the law intends that he may have notice in his county. Bras. Retor, de Br. pl. 100. 

If in reaple the reaple return, quod averia mortua sunt, that is a good return. Bras. Retor, de Br. pl. 125. 

It is a good return, quod nullus verecundius occupatur ad averia mortua, but if averia mortua be not irrepealable, the reaple is not obliged to require this. Dail. Slh. 556. Allen 33. 

If the reaple be thrown a stranger's goods, and he takes them, an action of treafps lies against him, for otherwise he could have no remedy; for being a stranger he cannot have the writ &c proprietis praebenda, and were he a party in the same case, in an action of reaple, the reaper to strip a man's house of all his goods; but Kels. seems to hold, that the action lies more properly against the person who threw the goods. 2 Rol. At. 552. Cum. 596. 

If the reaple comes to make reaple of beasts impounded as another man's cattle; 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 Hil. 6. 28. 2 Rol. Abt. 537. 

The reaple to return, that the cattle are elopement, or that the owner came to throw, &c, or a delivery; but he cannot return, that the defendant non eget the cattle, because it is supposed in the writ, and is the ground of it, which the reaple cannot falsify. 1 Ld. Raym. 613. 1 Litto. 551. See Dyer. 1 Dyer. 204. 

And for more learning concerning Reapleins, fee 4 Dyer. 

Replecinent, (Replecissi) 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. Hifi. Symb. par. 7. 

The reaple is to contain certainty, and not vary from the declaration, but muft purifie and maintain the true nature of the plaintiff's action; otherwise it will be a departure in pleading, and going to another matter. 1 Ify. 374. Though as a fauly bar may be made good by the reaple; so sometimes a reaple is made good by a rejoinder; but if it wants substance, a rejoinder can never help it. 2 Ld. Abt. 462. 

A reaple being intire, and ill in part, is ill in the whole; But if there be three reapleCTIONS, and one of them is superfluous, and the other two sufficient, and the defendant demurs generally, the plaintiff may have judgment upon those which are sufficient. 2 Sannd. 17. 1 Sannd. 338. Where the defendant pleads in bar, and the plaintiff replies in reaple, and the defendant demurs specially upon the reaple, and the bar is insufficient, if the action be of such a nature that a title is set forth in the declaration or count, as in a feme-don, &c, judgment may be given for the plaintiff upon the insufficient bar of the defendant: And where the title doth not appear till fet forth in the reaple, and that is insufficient, then judgment shall be had for the defendant for the ill reaple. Gibb. 138. 1 Leau. 75. 3 Nelf. Abt. 133. 

If the bar is naught, and the reaple likewise, the plaintiff shall have no judgment: So if there is a variance between the declaration and the reaple, that there be a verdict, &c, &c. 

It is necessary to judge, if the plaintiff shall have no judgment; so if there is a variance between the declaration and the reaple, that there be a verdict, &c, &c. 

The reaple concludes either with loci paratus &c subjunctum, 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 loci paratus, &c. Upon a demurrer it was held the point was not a reaple, but a replication, and concurred; because there is an affirmative and negative; and if he might be admitted to aver his reaple thus, there would be no end in pleading. Raym. 98. But where new matter is offered in a reaple, the plaintiff should aver is plea, so as to give the defendant an opportunity to rejoine. 4 Md. 265. Litto. 98. See 15 Vin. Abt. 244. 

Reproper, (Reproper) Is a public relation of cases judicially 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. on Lit. Jul. 293. Also when the Chancery, or other court, refer their reports to a master, or to a Master of Chancery, or other reference, his certificate therein is called a report. Cowell, edith. 1727. 


By a binding order of the court of Chancery, made by the court of Chancery, and in the cause of the 4 H. 9, &c, it was directed, That all reports should be filed within four days after the making, otherwise no degree or proceedings to be had thereupon: but the registrar reporting, that it was sufficient if the report were filed before any proceedings had thereupon, though not done within four days; the court agreed to the report. And the court took it to be well enough, though in this case the motion to confirm the report nisi causa, was made the same day that the report was filed. 2 Hal. Rep. 517. Lynt. (and Truesit of the S. Spokane) v. Ward.
It is not usual to confirm reports of Receiver's accounts, per Matter of the Rolls. 2 Win. Rep. 661.

Reprobating others, leaving a son, who shall inherit his grandfather's estate, before the father's brother, &c. 
B. &c. 200. 10. 8

Also executors represent the position of the teller, to receive money and aliens. Ca. Litt. 269.

Reprisal, (Reprisalis) is a perfonating of another: And there is an heir by representation, where no 
man shall be awarded a right in a manor by a decree of the court, and the act of the court is declared 
by some as adverse to his estate, and the act is to be reversed.
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Wherein in and for the better of the case, and for the better of the case, and the act of the court is declared 
by some as adverse to his estate, and the act is to be reversed.
Monsed. part 1. pag. 178.

A good estate in every manor by a decree of the court, and the act of the court is declared 
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But here we must observe, that there can be noreceiver but where the party has had the actual possession of the cattle, or other things whereof the receiver is supposed to be made; but if a man come to arrest another, or to detain, and is bribed, regularly his remedy is by action on the cause. Co. Lit. 161, a. Lit. Rep. 295. Hel. 145.

If it upon a fiero facius the sheriff forces goods which are taken away by a stranger, this is not properly a receiver; for by the nature of the goods, by virtue of the fiero facius, this is not a good return, but he shall be amerced; the party also, at whose suit the execution issued, may charge him by fieri facies for the value of the goods. 1 Vent. 21. 2 Sound. 343. 1 Skey. 180.

If the lord distrain for rent when none is due, the tenant may lawfully make receivers; so may a stranger, if his beaus be distrained when no rent is due. So if the tenant tender the rent when the lord comes to distrain, and yet he does not distrain, or if he distrains any thing not distribable, as beas of the plough, when other sufficient diffrrs may be taken, the tenant may make receivers; so may he if the lord distrain in the highway or out of his lie. Co. Lit. 47. 160. b. 164. 161.

But though the tenant may be treason for the diffrrs, and that otherwise the receiver cannot be unlawful; yet it hath been held in a faire praet, that the defendant cannot justify breaking the pound, and taking out the cattle, though the diffrrs was without caufe, because they are now in the actual custody of the law. Saltd. 247. Coffin.

There is a difference between a man’s being arrested by a warrant on record, and by a general authority in law; for if for a capias be awarded to the sheriff to arrest a man for felony, though he be innocent, he cannot make receivers; but if a fiero facius will by the general authority committed to him by law arrest any man for felony, he be innocent he may make receivers. Co. Lit. 161. See 5 Co. 68. Mackenzie’s case. 6 Co. 54a. Cre. jec. 486.

1. Of the offence of making a receiver, and how the offenders are to be proceeded against, and punished.
2. Of the form of the proceedings on a receiver.
3. In what cases the sheriff may return a receiver, of the form of the return, and for what defects it may be quashed.
4. Of the offence of making a receiver, and how the offenders are to be proceeded against, and punished.

It feems agreed, that the receiving a person imprisoned for felony, is also felony by the Common law. 1 Hal. Hisf. P. C. 606.

Also it is agreed, that a stranger who receives a person convicted by a jury, or a felon taken in his turn, knowing him to be so is in all cases guilty of high treason. Smol. P. C. 111. 1 John. 545. Whether he knew that the prisoners were fo committed or not. Cro. Carr. 583.

To make a receive felony, the following rules are laid down by Lord Chief Justice Hale; 1st. That it is necessary that the felon be in custody or under arrest for felony; and therefore if A. hinder an arrest, whereby the felon 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 felon was not taken. 1 Hal. Hisf. P. C. 606. 3 Ed. 3. Coram. 333.

So to make a receiver felony, the party receiver 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 receipt of him is felony; but it feems necessary that he should have knowledge that the person is under arrest for felony.
RES
if he be in the custody of a private person. 1 Hal. Hist. P. 666.
But if he be in custody of an officer, as confable of
the peace, at his peril, he is to take notice of it; and
so if it be there felons in a prison, and A. not know-
ing of it, breaks the prison, and lets out the prisoners,
thought he knew not that there were felons there, it
is felony. 1 Hal. Hist. P. 666. Cr. Cas. § 583.
A person committed for high treason, who breaks the
fence, and escapes, is guilty of felony, unless he lets
others 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
refcous of the others. 2 Hawk. P. C. 140.
If the person refcued were indicted or attainted of se-
veral felonies, yet the escape or refcue of fuch a per-
son makes it but one felony. 1 Hal. Hist. P. C. 599.
Wherever the imprisonment is fo far groundlfs or i r-
regular, or the breaking of a prison is occasioned by fuch
a necessity, Ur. that the party himfelf breaking prison,
is either by the Common law, or by the statute De fran-
gentibus prigionem, faved from the penalty of a capital of-
fender, a stranger who refcues him from fuch impris-
ionment is in like manner excufed; 2 fic e controf. 4
Hawk. P. C. 139.
A return of a refcue of a felon by the fheriff againf t
A. is not fufficient to put him to anfwer for it as a felony,
without indulgence or prefentment, by the statute 25
As in cafe of an escape, fo in cafe of a refcuse, if the
party refcued be imprisoned for felony, and be refcued
before indulgence, the indulgence must fimulate a felony
done, as well as an imprisonment for felony or fufpicion
thereof; but if the party be refcued, and taken by a
fheriff, and refcued, then there needs only a recall that
he was refcued, and taken and refcued. 1 Hal. P. C.
607.
But though the refcuer may be infidul before the prin-
ciple be convicted and attainted, yet he fhall not be
arraigned or tried before the principal be attained; but
if the perfon refcued were imprisoned for high treason,
fhall refcued immediate be arraigned, for that in
high treason all are principals; also fhe feems that he
may be immediately proceeded againft for a misprifon only,
if the King pleafes. 2 Hawk. P. C. 140.
The refcuer of a prinifer for felony, though not in-
clergy, yet fhall have his clergy. 1 Hal. Hist. P. C.
607.
By the 6 G. 1. cap. 23. fect. 5. it is enacted, that if
any perfon fhall refcude felons ordered for transporta-
tion, or affift them in making their escape, he fhall be
guilty of felony, and fuffer death without benefice of clergy. See
also 9 G. 1. f. 38.
As the act of refcuing perfons in cafes of treason
and felony is usually punifhed by indulgence, fo the of-
fence of refcuing a perfon arraigned on meane procefs,
or in execution after judgment, fubfeds the offender to a writ
of refcuse or a general action of trefpafs ut et armis, or
an action on the cafe, in all which damages are recoverable.
So it is the frequeft method of the court to grant an
attachment againft fuch wrong-doers, it being the highest
violence and contempt that can be offered to the pro-
577.
He who refcues a prinifer from any of the courts of
Wimfanger-Hall, without ftring a blow, fhall forfeit
his goods and the profts of his lands, and fuffer impris-
ionment during life; but not life his band, be-
cause he did not ftrike. 22 Ed. 2. c. 13. 3 Hift. 141.
It is clearly agreed, that for a refcuse on meane proce-
s the party injured may have either an action of tref-
pafs ut et armis, or an action on the cafe, in which he
is refcued; and an action against the wrong-
doer; and the rather, because on meane procefs he can
have no remedy againft the fheriff. Cr. fce. 456. H. 180.
Alfo it has been adjudged, that for refcues of a
perfon in execution on a captio ad facit, or captio sale, an
action will be laid against the refcuer, though the party in-
Vol. II. N° 122.

RES jured 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 refcuse, he may plead it in bar to an action
brought by the fheriff; fo if againft the fheriff or his ba-
liff, they may plead that he had fpafatfion from the party,
fo that if he recovers againft one, the other is discharged.
By the statute 2 H. 8. & 5. 9. cap. 5. § 5. it is
enacted, That upon pound-breath or refcues of goods dis-
trained for rent, the perfon grieved fhall in a special
action on the cafe recover treble damages and cofls a-
gainft the offendours, or againft the owners of the
goods if they come to his use.
In an action for his refcuse, the cafe for a refcuse, upon this fla-
tute it hath been held, that the plaintiff fhall recover tre-
ble costs as well as treble damages, for the damages are not
given by the statute but increafed; an action on the cafe
lying for a refcuse at Common law. 1 Salt. 205.
Lazoy v. Storie.
An attachment will be granted not only against a
common perfon, but even againft a peer of the realm,
for refcuing a perfon arraigned by due course of law; fo
that if the fheriff fhall in any cafe return tre-
ble costs as well as treble damages, for the damages are not
given by the statute but increafed; an action on the cafe
lying for a refcuse at Common law. 1 Salt. 205.
Eier v. Payne.
Whereupon upon the return of a refcuse, an attach-
ment is granted, and the party examined upon interroga-
tories, upon anfwering them he fhall be discharged;
but if the refcuse is returned to the phifer, and procufs of
outlaws iiffies, and the refcuse is brought into court, he
fhall not be discharged upon affidavit. Salt. 396. Rix v.
Belt.
2. Of the form of the proceedings on a refcuse.
An indulgence of a refcuse ought to fet forth the
special circumstances of the cafe with fuch certainty,
as to enable the defendant to make a proper defence.
Dyer 164. That no defect can be aided by the verdict.
1 Rot. Abr. 781.
And therefore, if an indulgence lay the offence on an
uncertain or impofible day, as where it lays it on a fu-
fure day, or lays one and the fame offence at diuer-
s days, or lays it on fuch a day which makes the in-
dulgence repugnant to itfelf, it is void. Mar 555. Rix. Ent.
263.
Where an indulgence of refcuse fet forth that 7. S.
committed fuch a felony, fuch a day, and year and place,
per quod A. B. pradidit J. S. cepit et arrejaverit, et in
falsa culpanda, et in tene et ibidem exaudiu J. S. halitus et
culpavit, it is made a quare, whether the indulgence is
not infidulce, because no time of the arreft is alleged in
the fame fentence with it; and it is doubtful whether
the time of the culpuidy, which is alleged in the next
fentence by force of the copulativus, be applied alfo to
the sral and both to the arreft and Dyer for either to in-
cline to the contrary opinion. Dyer 164. pl. 56.
Alfo it is held in Dyer, that an indulgence of a refcuse
is not good without expressly faying the day and year
both of the arreft and alfo of the refcuse, and that the
time of the latter is not fufficiently flown by faying
that of the former. Dyer 164.
But it has been since adjudged, upon exceptions taken to an indictment for a rescue, that it was not necessary to allege the place where the rescue was made, and that it should be intended that where the assizes were, there also was the court or the jurisdiction of the writ held. 

Cra. Jac. 315.


An exception taken to an indictment of rescues, that it wanted the words vi & armis or manu foris, but overruled, it being held by the court, that the word rei juris implies it to be done by force. Cra. Jac. 315. The same exception taken in Cra. Jac. 315, 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 rescue from a feeriant at name, who had taken a man on a plaint in London, because it did not forth that the person was taken by virtue of an arrestant, but it being alleged that he was lawfully arrested, it shall be intended by a good warrant. Cra. Jac. 472. Hurt's cafe.

It is said, that an indictment of rescues is not within the statute of additions, and that the naming the perfon indicted of such a party, without giving him any title, is sufficient. 2 Ioft. 665. 2 Slovo 84.

Note; Upon an indictment of rescues, if it were upon an arrest upon mefne procefs, and the party has appeared, the court will be easily induced to quash it; so if it be on procefs out of an inferior court, tho' the party has not appeared, for no aid is given to inferior juridictions.

In an action for a rescue the plaintiff must allege in his declaration all the material circumstances; as that such a writ was issued, that he was arrested, and in custody, and that he was rescued. &c. Galt. 127. 1 Lutw. 130.

In an action on the cafe for a rescue on mefne procefs, the evidence was, the bailiff flood at the street door, and sent his follower up three pair of stairs in disguise with the warrant, who laid hands on the party, and told him that he was arrested; 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 twen 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, wic. that the party became insolvent, and could not be retaken. 6 Mad. 211. Wilco & Cary.

3. In what cases the fliriff may return a rescue; of the form of the return, and for what defects it may be quashed.

The definition herein laid down in various of books and cafes is, that on a rescue on mefne procefs the sheriff may return the rescue, and is subject to no action; for this on a mefne procefs he was not obliged to raise his paffus comitatus, nor would it be convenient so to do on the execution of every mefne procefs. Cra. Eliz. 839.

1 March 1. 1 Jas. 201. 3 Bulst. 168. 3 Rol. Rep. 393. 4 Mad. 142. 1 Lutw. 130. 131. But the sheriff may, if he pleases, take his paffus to arrest one on mefne procefs. Np 40.

But if the sheriff takes a man upon an execution, as upon a copias ad satisfacientiis, and he is rescued from him before he can bring him to prifon, tho' he returns the rescue, yet this shall not be taken against him; for if his judgment is proved, that his bail do not surrender him, nor pay the condemnation money, and then a copias infues, to which there can be no bail, there is presumed that he will not be forth-coming, because neither he nor his bail have fastened the judgment; and therefore the sheriff ought to take the paffus comitatus; and consequently it cannot be held against him that he returned the rescue, and the party may have an action of escape against the sheriff upon this return; and this is provided by the statute Wykyn. 3. cap. 39. which was made to prevent sheriffs from returning refcuers to the King's writs. Cra. Jac. 419. 1 Rol. Rep. 382. 440. 3 Bulst. 168.


In an action on the cafe against the sheriff for an escape upon mefne procefs, the defendant pleaded a rescue, which on demurrer was held a good plea, though he did not swear that the rescue was returned. 3 Leo. 45. Ed. Cary v. Gore, adjudged.

Now if a rescue be on mefne procefs he once in prifon, the sheriff cannot return a rescue, for the law presumes that he hath a power to keep him there. 1 Rol. Rep. 411. 3 Bulst. 198. Cra. Jac. 419. But if the prifon is broke by the King's enemies, this shall excuse the flriff. 4 Cst. 84. 1 Lint. 239. But not if broke by rebels and pretenders for the sheriff or quarler hath his return, taken over against them. 4 Cst. 84. Cra. Eliz. 845. 2 Mad. 28. 1 Lint. 239.

If a felon be attainted, and in carrying him to execution he is rescued from the sheriff, the sheriff is punishable notwithstanding the rescue; for there is judgment given, and the sheriff shall have taken sufficient power with him; and therefore in that case the township is not liable. 1 Hat. Hil. P. C. 602. and there said that a rescue is no excuse in felony.

It hath been adjudged, that the return of a rescue by a sheriff must shew the year and day on which it was made, such return being in lieu of an indictment. 3 Mad. 249. 3. Brev. Return de Brief 97. Pitts. Const. 45. Attech.

But it hath been held, that the sheriff's return of a rescue on a lattitute, without mentioning the day of the capton, was sufficient; all the clerks in court affirming the precedents to have been so. Palm. 532.

The sheriff's return of a rescue, without mentioning the place where it was made, was held nought, and the party discharged. After 422. pl. 85.

So where upon a lattitute awarded against J. S. the sheriff returned a rescue on such a day, but did not mention any place where the rescue was made; and adjudged a void return, because it doth not appear that either the arrest or rescues were within his jurisdiction; but if it had appeared to have been done in the county, it should be intended within his bailiwick, tho' it was within in a liberty in the same county; and even in such a case the rescues had been unlawful, because the arrest was good, nobody being prejudiced thereby but the lord of the bailiwick. Cra. Eliz. 788.

But where the return of a rescue recited that a lattitute was directed to him, &c. and that he made his warrant to his bailiffs, who arrested A. and that he was rescued by J. S. this was held good, though it did not shew the time or place where the rescue was made. 2 Rol. Rep. 255. Wilde v. Withered.

Upon reading the sheriff's return of a rescues, these exceptions were taken to it; if it is said false warrantum neum Thomas Taylor, and doth not say that Thomas Taylor was his bailiff. 2dly. He doth not say for what cause he made his warrant, and so it appears not whether it was lawful or not; and upon these exceptions it was quashed. St. 355.

Upon a sheriff's return of a rescue, that it was not alleged that the party was in custody, it being only exception by which it was quashed out of the bailiff's custody; and for this it was quashed; so that it was not returned who rescued, or that the party refused himself. 1 Sid. 332. 1 Lint. 214.

The sheriff was not offended if he had a special bailiff, wic. That Cook and many others made an assault on the bailiff, &c. and the party arrested copias & abstinence, when it ought to have been cepitum & abhursum; and the court held the return good as to Cook, but void as to the others; and he was admitted to make his fine by attorney, whereupon upon a rescues of a person arrested on mefne procefs was returned against divers particularly named, and the return was that they refcurrunt, without saying &c quidlibet retrim
and held well enough, it being in the a-
former way. 22 Ch. 326.

Exception taken to the return of a rescue, that it was for want', without saying sub juicii officii, but veri-ruled; for it cannot be a warrant unless it be under
and the saying for want' directed, implied it was so. 2 Jefl. 107.
The tenant returned a rescue thus; 18. Non est in-
vinda huius, et executa resfitui brevis patet in seclusa huius brevi annatu'; and that was of a taking
and rescues; and the return of the rescue was qualified
of the repugnancy; for per cur. After non est inventum
all the rest is idle; and there remains no more for the
he defers the return; but his sheriff always concludes, that after the rescues made
the defendant non est invent in bailiun. 6 Med. 320.
Rev. v. Weetk.

The return of a rescue was, that the party was in
 cusody of three of the bailiffs, and that the defendant
 disputum fereatur upon one, which the sheriff called baili-
num; and for that reason it was quashed. 5 Med. 318.

It had been a great question, and much debated in va-
riety of cases, whether upon a return of a person out of
the custody of a sheriff's bailiff, the sheriff is to return the
resuce jucundum veritas fact, or jucundum veritas in
that, is that he was rescous out of the custody of the bailiffs,
and out of his own custody being the truth in law;
the bailiff's cussody being in law the custody of the
sheriff himself; and it seems now agreed that a return
ever way is good; and herein some books
divilingish between a bailiff of a liberty and a common
bailiff, and say that the return of a rescue out of the cussody
of a liberty ought to be so expressed,
because lie is such a public officer of whom the court
takes notice. Others divilingish between an action on
the cafe and an indictment for a rescue, for that in the
first the plaintiff must declare as the truth is, viz. that
he was rescous being in the custody of the bailiff,
but that in an indictment it must be according to the opera-
2 Ed. Rep. 263. Hil. 417, 1


But where the sheriff returned juxta brevis nisi di-
rect, 'is, warrant A. & B. bailis ni qui juxta inde
crepater the defendant, & in custodia mea habuerant qua-
rupe &c, &c, you entered him in custodia balliunum,
and this return was on motion quashed; for
petiit Ch. J, when the bailiffs have arrested the par-
y, he is in fact and in truth in their custody, but in law
he is in the custody of the sheriff; an answer either way
is good, viz. that he was rescous out of the bailiff's cussody
or, that he was rescous out of the custody of the bailiff's
bailiff; he must to say it was out of the custody of the
shireiff, and yet rescous out of the custody of the
bailiff; and therefore the return is repugnant. 2 Salt. 586.

It seems that antiently, when the sheriff returned a
return, the party was admitted to plead it to as an in-
dicument; but the course of law has been not to ad-
minister plea to it, but drive the party to his action against
the sheriff in a case the return were false; and hence it
was settled that the return of a rescue is not transferable,
but yet it has been held that the submission to the fine
doth not conclude the party grievous from bringing
his action for the false return, if it were so. Cre. Eliz. 781.
Dyer 212. 1 Jefl. 29. 1 Vent. 224. 2 Vent. 175.
Comb. 265. See 19 Vin. Abr. tit. Rescous.

Receifuid, 2. A return that commits such a Rescue. Cre.
2 rep. 2 part 14. 300.

Receifuid, (Receifuer) Is a taking again of lands into
the hands of the King, whereof a general livery, or su-
r in latine, was formerly min-ued, contrary to the form
and order of law. Starnd. Prerog. 56. See Re-
ception.

Receifuer, (Receifuation) A keeping or providing:
when a man lets his lands, he :refers a rent to be paid
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. 171.

A reception is always deput of the thing granted;
and of a thing being; And a reception of a thing is not
being, but is newly created out of the lands or ten-
ements demised; though exception and reservation have
- been used promiscuously. 1 Jefl. 47. The proper
place for a reservation, is next after the limitation of the efsate,
and reservation of rent may be every two, three or four
years; as well as yearly, half-yearly, quarterly. S. 1 Jefl.
47. 8 Rep. 71. It must be out of a boulfor land; and
ought to be either by the words of yielding and paying, lease,
or the word venuance, which is of both lettor and lollers,
The reservation of rent is good, although it is not referred
by apt and usual words, if the words are equivalent.
Plowd. 170. But reservation of a rent (secondum resum,
is a fraud reservation, see 2 Fen. 273. See Redemn-
ition, etc. of the word repar. Art. tit. Reservation.

Refrance, (Refenium) from the Fr. Refeuent or Refe-
fand, signifies a man's abode or continuance in a place.
Old Nat. Jewish. fol. 85. Whence also comes the parti-
ciple ref-gnu, that is, continually dwelling or abiding in
a place. Rithem, fol. 33. It is all one indeed with re-
france, but that a vofulte ties this only to preoos eceles-
tial. Gowne, edit. 1777.

Refrance is peculiarly used both in the
Canon and Common law, for the continuance or abode
of a parson or vicar upon his benefice. The default,
whereof (except the party be qualified and dispensed with)
then is of the lots of pounds every month, by hat. 28 H. 8.
The king's clerks attending their duty, not obliged
to reside at their benefices. Art. Clar. 6 Ed. 2. B. 1.

c. 8.

Chaplains of certain judges, and of attorney and fo-
licitor general, may be non-resident, 25 H. 8. c. 16.

Chaplains of great officers may be non-resident, 33 H.
8. c. 28. 3.

An incumbent professed by the university to a recu-
dant's living, shall lose it by 60 days absence in a year,
1 W. & M. c. 26. 6. See 19 Vin. Abr. tit. Refe-
rence.

Refrains, Is a tenant who is bound resuare on his
lord's lands, and not to go from thence. Leg. Hen. 1.
cap. 43.

Refuory Legate, Is he to whom the residuum of
an estate is left by will. And such legate as being made
executor with others, shall retain against the reft; where
there are two residuary legates, and one dies intestate,
his administrator that have a moiety of the furnish of
the testament, to the contrary to joint execu-
tors, who are not intitled to moieties; because by
making them residuary legates, the testator intended
an equal share to both. And if a residuary legatee dies
before the will is proved, his executor shall have admi-
See Recession.

Rejection, (Refusation) Is used particularly for the
Giving up of a benefice into the hands of the ordinary;
otherwise by the Canons, termed Resignation. And
' theo' it signify all one in nature with the word for-
render, yet it is by custom restrained to the yielding up a spir-
uitual living, or a benefice to the yielding up of temporal
lands into the hands of the Lord. And a resignation
may now be made into the hands of the King, as well as
of the diocesan, because he hath supremacy in ecclesiasticam, as the Pope had here in times past. Plow-

As to resignation of temporal offices, or giving at an
affirmalty of the corporation, that he would hold the place
of alderman no longer is a good resignation, especially
since the corporation accepted it, and chose another in his
place; but till such election he had power to waive his
resignation, but not afterwards. 2 Salt 433. The King
v. Mayor of Ripton. A burgess of a corporation came to the mayor, and
ordered the mayor to remove and dismiss him from the place
of burgess. Upon return of this a mandamus was de-
ed to reform him; for having resigned voluntarily, he
is entitled to say that the mayor had no power to re-
move him; and the cafe being sent to Holi Ch. B.
agreed,
agreed, and said that a corporation, as such, have power to take such refection. *Sid. 14. The King v. Vullery, offer a person, containing a sufficient to be removed, does not amount to a refection. *St. 2. 2. Pope. 1. A man may resign an office by parole, but they have not returned it for, and a preceptory mandamus was granted to relieve him. *Hillis's Rep. 450. The Queen v. Mayor, &c. of Gloucester.

Refugium by a common council man need not be by deed. *Lanc. v. Mayor, &c. of Cambridge v. Harding.


Refug, or Refugio, is properly used in a writ of tail or conjuge, as desert is in a writ of right. In French it signifies the authority or jurisdiction of a court, Salva tamen tam refueto quam alius juris &c. etiam juris alienum. *Lit. *Philipp. Le Harvy, Reg. Franchise, mentioned by Spelman in his glossary. Dericten refug, let refuge.

Respaetus computi Utriceroette habendo, is a writ for the respeting of a sheriff's account, upon just occasion; directed to the treasurer and bailiffs of the Exchequer. *Regifter, fol. 139. & 179.

Rescript (Repetio). It is used for delay, forbearance, or suspension, *Gno. fol. 12. cap. 9. in breve regis. Præcipui tibi post jussi faciatis in reflexionem, sufeu ad alium terminum competentem.

Resippe of homage, (Resippius homogis.) Is the forbearing of homage which ought first of all to be performed 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 respited the doing of their homage. See the *Stat. 12. Car. 2. c. 24. whereby this is taken away as a charge incident or arising from Knight's service, &c.

Reiponzon mutter. 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 reipondat efferter. *Jen. Cent. 306.


Reipondatullia, (Qui riponiam defert) He who gives in an answer, or he that appears for another in court at a day agreed, concerning whom hear *Gloucester, *ibid. 12. c. 7. Placita in superioribus capitis.—Prosequi quis post facit nulli qualiter placita euvit, tam per gri- jum quam responeamus for his peffum, &c. But *Pidd makes a difference between atterrors, effpector loco & reipondam, *ibid. 6. cap. 10. obt. *Of. *Tull. As if *effpector came only to declare the cause of the party's absence, whether defendant or tenant; and *reipondat for the tenant, not only to excuse his absence, but also to show why he meant 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. *Fleta, *ibid. 6. cap. 13. This word is used in the Common law, & significavit procuramentum vel cum qui abstinent exuvet. *Cowell, edit. 1777. See *Stuytman.

Reipondatul, (Rejoins) Has been a word chiefly used by *St. John of Jerusalem, who mentions certain accounts made to them by such as held their lands or flocks. Stat. 32. 18. H. 8. cap. 24. *In R. Parl. 9 Rich. 2. it is written respone.

Reiponbium, Bulnes: The word is used in this *case by *Fitslice of *Hewett, who tells us, that *Pope *Dowley, granted two permiss to *EUd. 1. pro reiponbis eccle- siaphilis.

Relater, To fly or flop: It is mentioned in Mass. *Paris. 515.

Refutation. (Refutatio) Is the yielding up again, or restoring of anything unlawfully taken from another. But it is most frequently used in the Common law for the refutation of lands or tenements, that have been unlawfully conveyed, or restored of them, and found guilty thereof, or otherwise attained 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 restored to his said money, goods and chattels; and this is done, in the judicature of delivery-as other justice, where whom any such felon or felons shall be found guilty, or otherwise attained, by reason of evidence 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 refutation for the said money, goods and chattels, in like manner as though any such felon or felons were attained at the suit of the party in appeal.

Before this statute there was no aid by way of indemnit 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 suit, yet this would not be a sufficient refutation of goods, as appears *Fris. tit. Coram. 440. *Hilli 23. *E. But this statute granted restitution upon evidence given by the party against the felon, as it seems, though he never made fresh suit against the felon. *Stanton. Pl. C. 167. *ibid. 3. cap. 10.—Suretman *Hawkins says, that this forms agreeable to practice, 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 groats neglect in prosecuting the offender, it may reasonably be argued, that he is not invited 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 profec- tor of an indemnity, 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 demand a restitution by the Common law. And the *Stam. 7. *ibid. That this statute would content for will appear the more reasonable if it be considered that it hardly can 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 indemnity may be, than from a conviction on the evidence of others, as a conviction in appeal must be; however, it shall appear to the court upon the evidence of the trial, or otherwise, that the party has been reasonably diligent in prosecuting the offender, he rightly grants, that the justices may, if they think fit, in their discretion, award a restitution without making inquiry concerning the fresh suit; but this forms to be no more than they might do in appeal, if they think fit. *2. *Hard. P. C. 171. cap. 23. sect. 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 *Fenner, *E. 661. *p. 4. in the case of *Hollay v. *Hilli, to have been adjudged in *Ham- born. 6. 1799.

A. bolce cattle and sold them at Coventry, in an open market, and immediately he was apprehended by the sheriffs of Coventry, and they seized the money; and afterwards the thief was arraigned and hanged at the suit of the owner of the cattle. And by the court, the part- ner of the money, notwithstanding the words of 21 H. 8. the goods they sold, was not supposed to have been said, that it was unlawful. *Netzage. *No 128. *Hilli's cafes.
The words of the statue are general, that where the thief is convicted at the prosecution of the party robbed, then the party shall have restitution; and unless no notice, whether the goods are sold in a market over or not, so that by this statute the Common Law altered to that point. And as for the Bishop of Worcester's cafe [Le. seco, where to a restitution granted at a felonies or offenses committed, to the proprietors of the right owner?] its true the inference of the book is as it is there laid; but the main point was not there in question, although in those times there was a doubtful opinion what the law was. And Kelyng says, he spoke with Mr. Lee, a very good clerk who had attended the felons 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 over; 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 over, ever since that resolution, the other party pretty distinctly demurred unto it, and had judgment. And he thinks it to be a very good resolution, warranting the practice as to the statute of 21 H. 8. and that it tends to the advance- ment of justice to make men prosecute felon, and it will discourage persons from buying stolen goods, though in a market over; for under that pretense men buy goods there for a small value of persons whom they have no reason to think to have been such persons when they sold them, or to which person it was sold. Kelyng's Sec. 47. 48. 50. P. Dalt. Jefus. mag. c. 164. See Appeal of Robbery, and 19 Vin. Abr. tit. Restitution.

As to restitution in cases of forcible entry. See Defends Entry.

Restitution, Is 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 see cause to grant it. And on quoting an indulgence of forcible entry, the court of B. R. may grant a writ of re-restitution, &c. 2 Ed. 4. 2 Ed. 5.

Re restitution extra ab ecclesiis, is a writ to re- fence a man to the church, which he had recovered for his sanctity, being suspected of felony. Reg. Orig. fol. 69.

Re restitution temporemmalis, is a writ that lies where a man being accused and confirmed Bishop of any diocese, and hath the King's royal silent sentence, for the recovery of the temporality or barony of the said bishopric: And it is directed from the King to the ecclesiary of the county, the form whereof may be read in Reg. Orig. fol. 294. and F. N. B. fol. 169.

Refoumists. (Refoumismus) is a body of 72 bands, mines, and signifies a fictitious summons, and calling of a man to answer an action, where the fictitious summons is directed upon any occasion, as the death of the party or such like. See Bro. tit. Refoumism, fol. 214. Of these there are four sorts, according to four divers cases in the table of the Register judiciis, fol. 1. and Relfour's Extrav. 2nd. attest, and Refoumism. See 19 Vin. Abr. 158. -170.

Refoumination, (Refoumination) is a word used in the statute of 31 H. 6. c. 7. particularly to signify the taking again into the King's hands such lands or tenements as before, upon false juralgation, or other error, he had delivered to the heir, or granted the profits of the right owner. Bro. tit. Refoulation and Refoumination, fol. 258. 31 H. 6. c. 7. and 19 H. 7. c. 10. See Restit. Refoumination of certain grants of annuities, 11 Ric. 2. cap. 8. Of attachments upon the revenues of Cadiz, Vol. II. No. 122.
Returns of members to Parliament. See Parlament.

Reverend. A writ judicial, granted to one impleaded to the taking the cattle of another, and unjust detaining them contra judicium & regius, and appearing upon summons, is dismissed without day, because the plaintiff makes default; and it lies for the return of the cattle to the defendant, whereby he is furnished with no remedy, if the court does not return to the county, or by whatsoever by default of prosecution. Reg. Jud. fol. 27.

Reverie, or Course. (From the Saxon word, Grefa, praefetissa. Lambart's exposition of Saxon words, verb, Praefetissa,) signifies with us the bailiff of a franchise or manor, especially in the western part of England: Hence flourrum for the fixed. See Kittin, fol. 43.


Revelland, Domains day book. Hereford, Terra Regia. First terrae manerumempire Regis Timland, et ecclesiis securitatis sui in Regio et lus. It et item dicit legat Regis, quid ipfa terra & engris qui inde exit, fortun autur regi. "The land which is here said to have been Timeland, T. E. R. and after converted into Revelland, seems to have been such land as being reverted to the King after the death of his tenant, and being to hold it for life, was not forsee granted out to any by the King, but held in charge upon the account of the Revell or bailiff of the manor, who (as it feem) happening in this bardship of Hereford, like the Revell in Chaucer, concealed the land from the auditor, and kept the profit of it to himself, till the surveyors, who are here called legati Regis, in the time of Edward the third, of this falsehood were preferred to the land, and judicium autur Regi. This passage from domesday-book is imperfectly quoted by Sir Edward Coke, in his Institutes, sect. 117, who from these words draws a false inference, That land holden by knights service was called Thainland, and land holden by freyage was called revelland. CoU. edit. 1757. See Spelman of Fould, c. 24, of Luminet.

Revells, Signify with us sports of dancing, making, St. used in Prince's courts, the inns of court, or other noblemens houses, which are commonly performed by night; and there is an officer to order and superintend them, who is intitled Master of the Revels. The Revel Master is properly the yeare sent that accures to every man from his lands and possessions; and generally applied for the revenues and profits of the crown. See Hereditary Revenue, King.

Reverential, Or a judgment is the making it void for error, and when upon the return of a writ of error, it appears that the judgment is erroneous, then the court will give judgment, quod judicium reveretur, adusculatur & pro multis habebatur. 2 Lit. Abr. 481. See Error, Acutality.

Reversion. (Reverie, from Reverer,) Signifies a return of land, after a division, inheritance, or purchase, when the owner or traitor of the same was deceased. It has a double acceptance in law; the one is, quod revertari cont. etus poarta poarta descript. And this is but an interest in the land when the possession shall fall. 2. When the possession and interest which was parted with for a time, ceaseth, and is determed in the person of the heir of the heir, or effeclude return to the donors, his heir or assignee, whereas it was delivered. There be two reversion in a reversion and a remainder, is, that a remainder is general and may be to any man, but to him that granted or conveyed the land, &c. for term of life only, or otherwise. A reversion is always out of the conveyance of the land, &c. proceeded, and is commonly perpetual, as to his heirs also. Lit. lib. 2, cap. 12.

REV

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REV

12. See Ca. lib. 2. fol. 51. Sir Hugh Chamber's cafe; 
and yet a recovery is sometimes confounded with a re- 
mainder. Ca. lib. 2. fol. 67. Tinker's cafe. Plowden, 

... but where the effate devised is altered in quantity or 
quality, there the devife, though heir at law, takes by 
purchafe; as where a man having two daughters, devifes 
his effate to the fon of one of them and his heirs, it was 
adjudged, that after the death of the third daughter, and 
their heirs, during the life of A, to support con- 
tingent remainders, then to the fift, second and other fons 
in his body in tail male, then to the heirs male he fhould 
have by any other wife, and for want of fuch iffue to 
the heirs of the body of B. with remainder to his own right 
heirs; the marriage takes effect, and they have iffue only 
a daughter, then the fons have a lien for life, remainder 
to his wife for life, remainder to his wife for life, 
remainder to C. in fee with warranty; and the question was, What ef-
tate was vefled in A by the firt deed, did whether the 
heirs of t. e. body fhould take by purchafe or defent? 
For if by purchafe, then the five levied afterwards was 
bar to them; and the court was of opinion, That they 
must take by purchafe, because where the ancestor 
has no effate for life, as in this cafe he has not, they can't 
be words of limitation; and here the effate is expressly 
limited to truftees and their heirs during his life; 
and a man can't make his heir right heirs purchase by the 
name of marriage, enter in a convenient way of life, 
or by his left will, yet he may make them fo of an 
effate-tail, which is a new created effate, different 
from what the law makes. 4 Med. 300. Cartb. 272. 1 

A fettleement was made by A. to the ufe of himfelf 
for ninety-nine years, if he fhould fo long live, remainder 
to truftees and their heirs during his life to support con-
tingent remainders, remainder to B. his fon for ninety-
ine years, if he fhould fo long live, remainder to truf-
tees and their heirs during his life to support contingent 
remainders, remainder to the fift and other fons of B. in 
tail male fucceffively, with other remainders over, re-
mainder to the right heirs of A. then A. by will devifes 
all his lands in poiffeafion, reversion or remainder to truf-
tees and their heirs, in truft by fule or mortage to raise 
mooney for payment of his debts and legades; and if this 
limitation to him right heirs was not effected by a pur-
chafe in himfelf, so as to be fubjcft to his di{po®i- 
tion, if the heirs were to take by purchafe was the queftion; all the 
intermediate remainders being determined. And it was 
argued upon the reafon of the above cafe of Tipping and 
Coffins, that the heirs muft take by purchafe, because he 
had by the forefaid will only and after his death his life 
was expressly limited to truftees and their heirs, and 
therefore againft his own exprifes limitation he fhould 
have no refulting ufe or effate for life; but on the other 
side it was argued, that the reafon of the refulting effate 
for life was, because it might poiffibly happen that all the 
intermediate remainders might determme before the death of 
A. by his and the truftees joining in a fettleement, &c. 
which would be a forfeiture of their effates, &c. and 
therefore of neccffity muft he have a refulting ufe for his 
life: And my Lord Chancellour was clear of this opinion, 
and faid it was his old reverfion in him, and de{peflable 
by will. But note, This was a reafon limited to his 

Lecqua tercar, A ridge or furrow of arable land. 

Lucullus. A bill of review of Chancery is, where a 
cafe hath been fubmitted to the judgment of the court, 
nullified; and fome error in law appears upon the decree, 
new matter discovered in law after the decrees made, 
which bill cannot be exhibited, but by licence of the court. 
See Collection of the Chancery Orders, pag. 69.

Reviviscens. A commiffion granted by the Eng. to certain commissioners, &c. See Appeal.

REVOLVING
RHA

Revolving, a word metaphorically applied to rents and actions, and signifies a renewing of them after they are extinguished by the lapse of time. Of which fee divers examples in Bract. tit. Revolutions of Rents, Allen, Cr. ed. 23. See 12 T. N. Ab. 228, 230.

Revolv., or Bill of Revolv., is where a bill has been exhibited in Chancery against one, who answers, and before the cause is heard, or if heard, before the determination of the cause. In this case the bill of revolv must be brought, that the former proceedings may stand revived, and the cause be finally determined. Cowell, edit. 1727.

Revoluc. is a desserting or making void a deed or will, which existed before the act of revocation: And a revocation and new declaration, is a deed made pursuant to some proviso contained in a former conveyance or conveyance, giving power to revoke or call back some thing granted; and by a new declaration to create a new estate of the land; after which revocation and declaration the land shall fall to accordingly. 1 H. Rob. Convey. 2d edit. 754.

There were no powers of revocation at Common law, but a man may have a condition of re-entry. But now these provisos, containing power of revocation, are erected into voluntary conveyances, and are become very frequent, and pass by riding of ufe according to the flat, 27 Ed. 8. cap. 10. for being coupled with an ufe, they are void; but not void, if founded on the former estates; as if one feid in fee covenants to fland feid to the use of himself for life, and after to the use of his fon in tail, with divers remainder over; provided, That he may revoke any of the said ufses, and if afterwards he revokes them, he is feid in fee again without entry or claim. But in the case of a feiement or other conveyance, whereby the seifie or grantee is in the Common law, such provisos would be merely repugnant and void. Co. Lit. 237, a. It would be void as to destroying the feiement, but it might be good as to revoking the ufs, to which the feiement was made. 1 Will. Cowell, edit. 753.

The revoker is feid again without entry or claim, Co. 173, 8. for he being tenant in possession, cannot enter upon himself. But he cannot bring trespass without entry. Carter 78.

Where in a trust-term to raife portions there is a power for the husband, with the content of the trustees to revoke the ufs in a feiement; this supposes the setting of the portions. 2 Wills. 102.

Of two voluntary setlements, if the flat is made without a power of revocation against the intent of the party, the second flat prevails. 1 Wills. 581.

A term only of as good disobedging memory when he revokes his will, or his deed, as when he makes it. Civ. jusc. 497, fl. 3.

Something may be revoked of course, though they are made irrevocable by express words; as a letter of attorney, a submission to an award, a feuement or half will; for they do not have their nature are revocable. 8 Co. 82. See UFE. REVOL.

Revolution parliament. An ancient word for recalling a parliament; and Ann. 5 Ed. 3. the parliament being summoned, was recalled by such a word before it met. Pryt. Animad. on 4 Int. fol. 44.

Revouchers. There are rewards given in many cases by statute, 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 & 6 W. 3. also the like reward for the apprehending and taking of burglars. Stat. 5 Ann. The same reward for apprehending of money coiners or clippers, &c. 6 & 7 W. 3. and the like reward for the apprehension of thief-takers, not protecting felons; and the like reward for informing the officer of the customs, by force of arms, &c. 6 Geo. 1. cap. 20, 22.

Revover. (mentioned in fl. 43 Eliz. cap. 10.) Is a term among clothiers, signifying cloth unevenly wrought, and called ruick-cloth.

Rikant, is a part in the division of the country in Wicks, before the conquest; as first a contribut of a hundred towers, under which were 10 many communis, each communis had twelve minors or circuits, and two rougm- phytes; there were four rougmphytes to every minor; every rougmphyte comprehended four groves, every grove had four roudiers; and four tenements were in every roudier. This word rikant admits not of any proper signification in English, but is by Dr. Davie re- conized out from hereditary, from the verb shone, pertur, disturbe. Taylor's Hist. of Grevkand, p. 69. Ricks are not created for ten small holdings. In 6 H. 6. by ordinance of the Mint, a pound weight of the old standard was coined into 45 ricks, going for ten small holdings a-piece, or a proportionable number of half ricks, going for five small holdings a-piece, or rick farthings going for two small holdings and half-pence. See Leeton's Essay upon the Coinage. The golden rick in 1 Hen. 8. was to go at seven ricks for one three-pence. In 2 Eliz. one rick coined at five small holdings a-piece; when a pound of old standard gold was to be coined into 48 ricks. In 3 4. ricks of gold at thirty small holdings, and spurious at fifteen small holdings. Cowell, edit. 1727.

Rikant, (Rikaldus, Fr. Richtbald.) A vagrant, luxurious spend-f Turkey, a rogue, where monger, a person given to all kinds of wickedness and licentiousness. Petition against ribalds and hurdy beggars. Parl. Parl. 50 Edw. 3. ann. 64.

Ritt. To what duties liable on importation, 4 5 & 6 Ed. 5. cap. 5. fett. 2. Rice and malës not to be brought in under 2 3 & 4 Ann. cap. 5. fett. 2. 3 Geo. 2. c. 28. fett. 1. Rice may be carried from South Carolina, &c. to any part of America southward of the said colonies, 4 Geo. 3. c. 27. See Plantations.

Ridwill in Surry. Richmond old park fected on Queen Charlotte for lie, 2 Gen. 3. c. 1.

Richmond in Virginia. Spiritual persons in the archdeaconry of Richmond, shall not be agents on each of the delicious goods, 76 Hen. 8. c. 15.

Richmond and Lenor, (Duke of) His lease of the annuity of drapers provided for, 11 & 12 Will. 2. c. 22. fett. 2.

Rich-roll. See Roll.

Riding armed. With dangerous and unusual weapons, is an offence at Common law, 4 Iust. 160. by the flat. 2 Ed. 3. cap. 3. No man shall ride armed by night or day to the terror of the people; or come with force and arms before the King's justices, &c. doing their office; upon pain to forfeit their armor, and suffer imprisonment at the King's pleasure: And a fine may be set upon them by the justices, by 10 & 12. cap. 1. And no peron can escape the going or riding armed in publick, by alleging, that he wears armour for his defence against an affault; but men may wear common arms according to their quality and station, and have attendants with their horses, &c. and so take defensive arms to the danger of their persons. And all persons may ride or go armed to take felons, fupposing they execute the King's process. &c. 3 Iust. 162.

Riding sheriff. One of the six clerks in Chancery, who, in his turn for one year, keeps the commandments books of all grants that pass the Great seal that year, 17 Edw. 7. cap. 17.

Ridings. Are names of the divisions of Yorkshire, which are three, viz. the East-riding, the West-riding and the North-riding, mentioned in the statute 22 H. 8. cap. 8. and 23 H. 8. cap. 18. In indelimiters in that country, it is requisite that the town and the riding be expressed. W. J. Syned. part 2. tit. Indelimiters, fett. 70, 95.

Riems arreret. Is a kind of plea used to an action of debt upon assurances of account, whereby the defendant does allege there is nothing in assured.

Riem passe pat il fait. (Nothing passes by the deed.) In some cases this exception taken in some cases to an action. See Brac. Soc. Prayenger at ass. on Reard. 1. 27.

Riens per deferent, (Nothing by the deed.) Is the plea of an heir, where he is sued for his ancestor's debt, and hath no land from him by desc. See 3 parts, Coke's Rep. fol. 151.

Rience county, (Rense eminere, from the Fr. arrerre, stopitur.) In the statute of 3 Ed. 3. cap. 5. is apposite to
If a man be in his house, and he hears that J. S. will come to his house to bear him, he may well make an assembly of people of his friends and neighbours to assist and aid him in safe keeping his person.

Riot, and unlawful assembly. Riot, (riots and riutum, from the French vti, quem non relium rimam & jurgiam sincerum, sed vimulatum, et quo phre in unum, psiculimur unum, cellamur,) Signifies the for- erable doing of an unlawful thing by three, or more persons assembled together for that purpose. Phil. Haley, vol. 2, p. 125. It is a tumult or disturbance, that is to say, a riot.

If three come out of an alehouse, and go armed, it is a riot. 3 H. 7, 7. Per Hon Ch. J. in delivering the opinion of the court. 11 Med. 116, 117. The Queen v. Sely.

Serjeant Hawkins says, A riot seems to be a tumultuous disturbance of the peace by three persons, or more, assembling together of their own authority, with an intent mutually to affile one another against any who shall oppose them, in the execution of some enterprise of a private nature, and afterwards actually executing the fame in a violent and furhacious manner, and without the terror of the people, whether the act intended was of stief lawf ul or unlawful. Hawk. P. C. 155. cap. 65. f. 1.

Serjeant Hawkins says, A riot seems to be, according to the general opinion, a disturbance of the peace by persons assembling together with an intention to do a thing, which, if it be executed, would make them rioters, but neither actually executing it, nor making a motion toward the execution of it; but it says this seems to be much too narrow a definition; for any meeting whatsoever of great numbers of people with such circumstances of terror, as cannot but endanger the public peace, and raife fears and jelloufies among the King's subjects, seems properly to be called an unlawful assembly; as where great numbers, composing 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 such an assembly. Hawk. P. C. 158. cap. 65. f. 9.

If a man be in his house, and he hears that J. S. will come to his house to bear him, he may well make an assembly of people of his friends and neighbours to assist and aid him in safe keeping his person.

Riot, and unlawful assembly. Riot, (riots and riutum, from the French vti, quem non relium rimam & jurgiam sincerum, sed vimulatum, et quo phre in unum, psiculimur unum, cellamur,) Signifies the for- erable doing of an unlawful thing by three, or more persons assembled together for that purpose. Phil. Haley, vol. 2, p. 125. It is a tumult or disturbance, that is to say, a riot.

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If a number of persons 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 Hl Ch. 2, Statute. 475. Trin. 2 Ann. Granground Corporation's case.

Hl Ch. 2, thought an assembly might meet together with such circumstances of terror as to be a riot. 2 Salt. 504. 595. pl. 4. Trin. 6 Ann. in the case of The Queen v. Sitly & others.

If the tumultuous assembly lawfully without any ill intent and unprovoked, and if no arrest happens, none are guilty but such as act; but if the assembly was originally unlawful the act of one is imputable to all. Per Hl Ch. 2, 2 Salt. 505. 6 Ann. at nifi prius in Middlex. The Queen v. Ellis.

It seems agreed, that a number of persons, being met together at a fair, or market, or church-saving, or any other lawful and innocent occasion, happen upon a sudden quarrel to fall together by the ears, they are not guilty of a riot; but of a sudden arrest only, of none which 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 provocation of the person or persons injured, yet it is said, that if persons innocently assembled together, do afterwards upon a disparity happening to arise among them, form themselves into parties, with promise of mutual assistance, and then make arrest, 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 so confederated as to be parties pure from the time of such confederacy, as if their first coming together had been on such a design; however, it seems clear, that if in an assembly of persons met together on any lawful occasion whatsoever, a sudden proposal should be flattered of going together in a body to pull down a house or inclose another, 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. 1 Henck. Pl. C. 156, 157. cap. 05. f. 3.

Statute concerning riot, &c. with adjudications.

Stat. 34 Ed. 3. cap. 1. enacts, that justices of peace shall have power to restrain evil-doers, rioters, and all other baritors, and to take and challenge them, and carry them to the bench, and there punish them.

This statute hath been liberally construed for the advancement of justice; for it has been resolved, that if a justice of peace find persons riotously assembled, he alone without flying 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 parole 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 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 parole 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.

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rieff; but because it appeared to be taken a month after the riot committed, the court held it clearly good by 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 ended. And this is the difference. 

Conv. 383. Titin. 3. 1 W. & M. B. R. The King v. Pat. 

And but the presence of the attendants on the view is, that they may raise the pote. camitatas to suppress the rioters, which need not when they are dispersed, 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 same done: And because the statute says nothing of any complaint or notice being made, or given to them, it was moved by one of them, that they were bound by law to take notice at their peril; but divers other justices were of a contrary opinion. 

illo. quere bene the words of the statute of 13 H. 4, cap. 7. and the law. But the report says, it seems reasonable that notice or complaint be made to them; for it is the statute of R. 2. of forbidden and unlawful riot, to be committed in this statute of 13 H. 4, cap. 7. Besides, justices of affize are under the pain of penalty of 100 l. if such riot &c. be committed in their presence fitting in their feurons, and consequitly they are not so in case they are absent, and no complaint or notice be given to them. D. 210. 8. pl. 25. Hil. 4 Eliz. The attorney general v. Grostby & al. 

Within a month after. See sect. 1. of the preceding act. 

The month shall not be confined to 28 days, but to the almanack month; per curiam. Sid. 186. pl. 9. Pob. 16 Can. 2. B. R. The King v. Coiffins & al. Hanok. 163. pl. 65. f. 31. says, it is not clearly settled whether the month within, which the justices of peace are confined to take their inquiry by force of their 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 not, they must form a precept for the returning of the jury within a lunar month, they may take the verdict accordingly; for the cause being regularly arrested in them within the time prescribed by the statute shall be prosecuted, as to the same reasons. ought, with such convenient dispatch as to the judges thereof shall seem proper; and the statute, by obliging the justices to make speedy inquiry, meant not to hurry them in the execution. 

Tho' this statute to be necessary, that the inquisition shall be taken within a month, under a penalty in the neighbouring justices, yet after the month it is still discretionary in the justices to take an inquiry. And that by construction of the last clause of this statute which says that they must do execution of this act, in pain of 100 l.) and it hath even been the practice to take such inquisitions out of feions. 

Cartheb 36. The King v. Ingrem, S. C. and P. Conv. 423. and the time is only mandatory. 

The justices of peace dwelling within?] See sect. 4. of the former act 19 Hen. 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. Per Rol. Terman & 40 justices; but Nicholl J. doubted of this. Sy. 246. Hil. 1850. in case of Cofdies, Sir. in the name of John. 

Hawkins's Pleas of the Crown 165. 166. cap. 65. sect. 45. 

The Jeronizes. that in the construction of this clause of the statute, these following opinions have been holden, 1. That no justice of peace is in danger of incurring the penalty thereof unless he dwells in the county wherein a riot happens. 2. If any justices 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, whole dwelling differs first at the time of the riot, or one of them, happen to dwell within the month, those whole dwelling is thereby become the nearest, are bound to execute the statute in the same manner as the others were. 4. That notwithstanding the fame justices only, who dwell nearest, are liable to the penalty of the statute, and in case notice neglect to supply their default, they are fineable at differing sum. 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 through a default of the sheriff, &c. either in refusing to appear, or to return a jury. 

This that the said justices, &c. shall not avoid the penalty by being within the statute, or else by recording a riot without committing the parties, 17th. 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. 50th. That if a justice of peace, &c. had no express notice given him of the riot, he shall be excused, unless it were so flagrant, that by common intention every one dwelling near it could not but have notice thereof. 50th. That the acquiescence or agreement of the parties aggrieved is no excuse to the justices, because they ought, in office, to make the inquiry, and make proclamation whether any will give evidence, and may bind fuch of the parties grieved, as shall refuse to prosecute their complaint, to their good behaviour. 

Stat. 2 Hen. 5. s. 5. cap. 8. sect. 1. If default be found in the said justices of peace, or justices of affize (named in the statute 13 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 commissary 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 commissary shall send into the Chancery the inquest before them taken, and the coroners shall make the panel for the time that the sheriff, that is appointed in default, shall stand in his office, which coroners shall return no persons but such which have lands to the value of 100 l. by the year; and the coroners shall return upon the perons impaneled at the first day in 25 l., and at the second day 40 l., and at the third day 100 l. And at every day after the double at least; and if default be found in the coroners touching the return of such persons impaneled, or touching the return of one of every them shall pay to the King 40 l. and if no such person be impaneled, the 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 may not have evidence for the King, sheriff, they shall not be excused if they make not execution of the statute.

Seft. 2. Provided, That the justices and other officers shall do their offices at the King's costs, by payment to be made by the sheriff byindentures betwixt the sheriff and the justices and other officers; and rioters attainted of great and heinous riot shall have one year's imprisonment; and rioters attainted of petty riots shall have imprisonment, as beft shall seem to the King and his council; and the fines of such rioters shall be by the said justices increased, and put in greater sums than they were wont to be; and all merchandises and estate, which the people in the county shall be attainted to the justices, sheriff, or affize, sheriff or under-sheriff, when they shall be reasonably warned, to ride with them to refit such riots, &c. upon pain of imprisonment, and to make fine and rand to the King and bailiffs of franchises shall cause to be impanelled sufficient perons, upon pain to lose to
the King 40." And like ordinances and pains shall hold place in cities, boroughs and other places which have justices of peace.

Sect. 1. c. 2. s. 1. e. 1. t. of murderers, manslaughter, robberies, batteries, affinimities 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 by or withdraw him, a bill shall be made for the King; and the Chancellor, after such bill to him delivered, being on oath that such bill be true: (but) 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 writ, or yield themselves in the Chancery, such persons shall be put in ward, or to mainprize; and he shall be entitled to inquire of such offences; and if the sheriff return not within the time, he shall not be exonerated, the former persons do not yield 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; and in every such writ of proclamation shall be contained the substance of the bill, and if they come not at the day, then shall they be convol.

Sect. 2. Provided that the suggescions 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 each county in the bill, 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 palatine of Lancaster, 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 fuggescions 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. e. 14.


Sect. 2. Provided that it be witnessed by two justices of peace, that the common fame runne in the counties of the same riots, before the writ of capias be awarded. Provided also, that if such case happen in the county palatine of Lancaster, or elsewhere in a place infranchised, where there is a Chancellor, the Chancellor of such county or franchise or some person having a manner of administration, suggescion be witnessed by a justice, or the lieutenant of a justice, and the sheriff of such counties palatine 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 precise directed to him shall return 24 persons dwelling within the shire, whereas every one of them shall have lands within in the shire to the yearly value of 20l. of freeth, or 25l. 6d. of copyhold, or of both, to inquire of the said riot, rout or unlawful assembly; and he shall return upon every person impeached in such, at the first day 24 hours, and if no writ be found in the sheriff for returning of other persons, &c. the sheriff shall forfeit to the King 20l. and if the riot, rout or unlawful assembly, be not found by the jury, by reason of any maintenance or embrcy, the justices and the sheriff shall in the certificate certify the names of the maintainers and embrcers, with their credits: under oath of every of the said justices, and sheriff, in writing committed to the jury in the direction of the justices.

Stat. 1. Geo. 1. cap. 5. sect. 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, or of any city, &c. by proclamation in the King's name, to disperse themselves, and depart to their several habitations, shall not continue together by the space of one hour, such proclamation, such continuing together to the number aforesaid shall be felonious without benefit of clergy.

Sect. 2. The form of the proclamation shall be in manner following, viz. the justice of peace, &c. shall, along the rioters, or as near to them as he can safely come, command them, when proclamation is making, and then shall openly make proclamation in these words, or like;

Our Sovereign Lord the King chargeth and commandeth all perones, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, and all persons whatsoever, upon the pains contained in the act made in the fifth 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 refer to the place, and make proclamation in manner aforesaid.

Sect. 3. If such persons so unlawfully assembled shall, after proclamation made, not disperse themselves within house, or house shall be lawful for every justice, sheriff, &c. and every high and petty constables, or other peace officer, and for such other persons as shall be commanded to be affiling to such justice, &c. (who are empowered to command all his Majesty's subjects, of age and ability, to be affiling) 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 refiling the persons so dispersing or feizing them, such justices, &c. shall be indemnified.

Sect. 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 registred according to the act 1 W. & M. cap. 18. or any dwelling house, barn, fable or out-houses, it shall be felonious without benefit of clergy.

Sect. 5. If any person shall with force oppose, or in any manner wilfully hinder or hurt, any person 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 shall be punished, and the number of twelve, to whom proclamation ought to have been made, if the fame had not been hindered, shall, if they continue together an hour after such hinderance knowing thereof, be adjudged felons without benefit of clergy.

Sect. 6. If any church, chapel, &c. shall be demolish'd by such persons. If any persons so unlawfully assembled, the inhabitants of the hundred shall yield damages to the person dammified 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 truth for rebuilding and repairing such church, &c. and the judgment shall be good for the plaintiff in such action, the damage recovered shall, at the request of such plaintiff, &c. be levied upon the inhabitants, and paid to such plaintiff by such ways as are provided by 27 Eliz. c. 12. for reimbursing any money recovered by any party robbed; and if such church, &c. shall be in any city or town, that the same shall be a court of itself, or is not within any hundred, such damages shall be recovered against two or more inhabitants of such city or town.

Sect. 7. This act shall be read at every sessions and at every leet.

Sect. 8. No person shall be prosecuted for any offence contrary to this act, unless proclamation be commenced within the same time as the offence committed.

Sect. 9. Sheriffs, tellwards, bailiffs of regalities, magistrates of royal boroughs, and all inferior judges and magistrates, and all high and petty constables, and other peace officers, in Scotland, shall have the same power.
Towers and fortifications.

The city of London impoverished to make the river Lea (or) navigable, 15 Ed. 1. c. 18.

The navigation of the Ouse in Yorkshire improved, 23 H. 8. c. 16.

The navigation of the Ouse, 13 Geo. 3. c. 13.

The navigation of the Ouse exceeded, 10 Geo. 2. c. 33.

Santry Break in Lancinghire made navigable, 28 Geo. 2. c. 8.


The Steuer made navigable from Amington to Sudbury, 4 Ann. c. 15.

Stroudwater made navigable, 3 Geo. 2. c. 13.

The Lord Mayor shall have the confiruation 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 Jas. 1. c. 20.

The Thames to be made navigable from Brent to Oxford, 21 Jas. 1. c. 32.

Excisions by owners of locks upon the Thames prohibited, 6 & 7 W. 3. c. 16. 3 Geo. 2. c. 11. 24 Geo. 2. c. 8. f. 2.

For stopping Dagenham breach in the Thames, 12 Ann. f. 2. c. 17. 7 Geo. 1. c. 20 f. 32.

Commissioners appointed for regulating the navigation of the Thames, 24 Geo. 2. c. 8.

For a ferry cros the Thames, from Rettlow to Retherby, 28 Geo. 2. c. 8.

The Tone made navigable from Taunton Dean to Bridgewater, 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.

Weyferry Break in Lancinghire made navigable, 10 Geo. 2. c. 29.

The rivers Wye and Lugg made navigable, 7 & 8 W. 3. c. 14. 13 Geo. 1. c. 34.

For reflowing and maintaining the navigation of the river Witham, in county of Lincoln, 2 Geo. 3. c. 32.

Bota, Is a coat or garment. And those who rob accipient of another, not accounted of his family. Quaen distant armigeri qui in aequi causa accubat & ad socios eum. Wallingham, p. 267.

Robbery, (Robaria) Is a felonious taking away of another man's goods from his person or prerence against his will, putting him in fear, and of purpole to steal the same. Willy, Symbol. list. 44. which is felony of two-pence. Kilburn, f. in. 16. and 22. Lib. aple. 39. See also uturce, &c. faux; verb. Reif, and Crump. Jutices of Peace, f. 30.

Robbery is a felony by the Common law, committed by a violent assault upon the person of another, by putting him in fear, and taking from his person his money, or other goods of any value whatsoever. 3 Inst. 68. c. 16. 7 U. 1. Wart.
1. *What is or amounts to a robbery in respect of the manner, or person from whom any thing is taken.*

2. *Of seizing and try, and what kind of robbery it must be, to make the honest chargeable.*

3. *On what day, or time of the day, the robbery must be committed, to make the honest chargeable.*

4. *Who is to bring the action, and make oath of the robbery, and of the notice to be given thereof.*

5. *Before whom the oath may be taken, and where the party may give bond for payment of costs, in case he does not prosecute.*

6. *At what time the action is to be brought; what evidence will maintain it; and what bail except the hundred.*

7. *How the money is to be levied, and each hundred to contribute to the charge.*

1. *What is or amounts to a robbery in respect of the manner, or person from whom any thing is taken.*

The circumstances of putting one in fear makes the difference between a robber and a cut-purse; both take it from the person, but this takes place **without force** or without assault or putting in fear, and the robber by violent assault and putting in fear. *3 H. 68. cap. 10.*

Wherever a person affaults another with such circumstances of terror as put him into fear, and caueth him, by reason of such fear, to part with his money, the taking is robbery, and not assualt, or putting in fear, though there were any weapon drawn on or not, or whether the person affualted delivered his money upon the other's command, or afterwards gave it to him upon his ealling to use force, and begging an alms; for he was put into fear by his affault, and given him his money to get rid of him. *Hawk. Pl. c. 60. sect. 33. fett. 9.*

In the case of **Abraham** and others, at the Old Baily feessions in December 1755, **Stephen Macdaniel, John Bir-ry; James Egan and James Salmon,** were indicted as accessearies before, to a robbery committed by **Peter Kelly and John Ellis** on the person of the said James Salmon. The jury found a special verdicth, that Kelly and Ellis were convicted of the fail robbery; that before the robbery, all the prisoners and one **Thomas Blee,** in order to procure themselves the rewards given by act of parliament for apprehending robbers, did meet at the *Bell Inn* in Holborn, and agreed that the said Blee should procure two persons to commit a robbery on the prisoner Salmon; that for that purpose, theycontrived that Blee should inform the prisoners of his purpose, and that he would all the prisoners to thieving some linen in the parish of St. Paul Desford; that in pursuance of this agreement, and with the privity of all the prisoners, the said Blee did procure Ellis and Kelly to go with him to Desford in order to thieve linen, but did not at any time before the robbery inform them of the intended robbery; that they went with Blee to Desford, and the prisoner Salmon being likewise waiting there in pursuance of the agreement, they robbed him of the money and goods mentioned in the indictment: They further found, that none of the prisoners had any conversation with Ellis and Kelly previous to the robbery, but that Macdaniel, Egan and Berry law them and approved of them as proper for the purpose of robbing Salmon. This was argued before all the judges; who were unanimously of opinion, that supposing a robber to have been committed, all the prisoners were guilty as accessearies before, except Salmon who could not be accusatory to the robbing of himself; but forasmuch as the prisoners procured Salmon in pursuance of the agreement beforementioned, they were all accusatory that in legal construction he was not robbed at all, since it is of the essence of robbery, that the goods be taken against the will of the owner; although the circumstances of putting in fear is perhaps not necessary to be inferred in the present case, it was deemed not to be in the way proved; for if a man is knocked down without any previous warning and thereby rendered incapable, it is he mutually

robs and is overpowered without being under any fear at all, it is not the left robbery upon that account; and the prisoners were discharged of the indictment. But afterwards an indictment was found against them, and prefixed at the expense of the crown on the representation of the judges, for a conspiracy; in which the prosecution was formed by the special jury in the robbery bill were charged. On this indictment, a trial was had; and the court gave judgment, that they be all set in and upon the payroll twice; that they stand committed for seven years afterward. One of them (Egan) lost his life in the pillory, through the resentment of the populace. After that account, the others did not stand a second time. But they were all in Nge-town luke clauely confined in pursuance of their sentences. *7 H. 121.*

The words of the indictment, *vindictor & felicite epi* must be understood that there is an actual taking in deed, and a taking in law, and that may be when a thief receives, *3 H. 68. cap. 10.*

**Sergeant Hawkins** says, it forms 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 it him 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 paid to take it from me, as he who actually takes it out of my hand. *Hawk. Pl. c. 60. sect. 34. fett. 4.*

This word (epit) necerely implies, that the thief must be in possession of the thing stolen. For example: If the bag or purse of the true man be fastened to his girdle, &c. and the thief, the more easily to take the bag or purse, cuts the girdle, whereby the bag or purse falls to the ground, this is a taking in law, and as never any possession thereof, &c fimilibus: But if the thief takes up the bag or purse, and in thriving had it fall, and never took it again, this had been a taking, because he had it in his possession; for the continuance of his possession is not required by law. *3 H. 69. cap. 16. S. P.*

**Hawk. Pl. c. 60. sect. 34. fett. 8.*

If the true man had call off his forcast, or other uppermost garment, and the same lying in his presence, a thief affaulted him, &c. and takes the forcast, this is robbery; for that which is taken in his presence, is in law taken from his person. *Hawk. Pl. c. 60. sect. 34. fett. 8.*

Upon not guilty pleaded to an indictment the evidence was, that P. & Q. met W.S. and W.T. in the highway, where they endeavoured to rob them, and for that purpose drew their swords and offered to strike them, thereupon W.S. rode away one way, and P. pursued him, and W.T. went another way, and Q. followed and robbed him out of sight or hearing of P. And it was held
The statute of Winter gives the action against the hundred; but by subsequent statutes, such as 27 Edw. 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 feeling, 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; and because they did not apprehend 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 Salk. 614.

Also 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 by day or by night, does not make the hundred liable: The reasons whereof are, that every man's house is in law esteemed his castle, which 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 holden to have notice of it, so as to be able to apprehend the offenders. 7 Co. 7. 1 Salk. 614. 4 Trench. 157.

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 Salk. 618, 4 Forsyth. 157.

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. Forth. 159. may be in a private way, may be in a copine; and in both cases the hundred shall be chargeable. 2 Salk. 614.

Therefore where upon the statute of hue and cry the plaintiff disdained, grad qusdam fore ignari, &c. qudam quidam senu sc Anglorum partis inuicim ignari, cavea Foir-miliget, infra parochiam, &c. et armis alludit him, and robbed him of so much money, and there being a verdict for the plaintiff, it was moved in arrest, that qudam quidam senu might be meant of a robbery committed in a house, garden, or wood, of 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 nonsuit: 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. Coth. 71. 3 Mod. 258. 1 Show. 60. Comb. 130. S. C. adjudged between Slang and the inhabitants of the hundred of Telford.

3. On what day, or on some of the day, the robbery must be committed; and what hundred shall be liable.

It hath been decided by three judges against one, that a robbery is near to that it should charge the hundred, and that the purifying of robbers who violate the Sabbath, was so far from being a profession 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 protected in their journey.

Cros. 707, 325. Nauice versus The Hundred of Sixe.
1 Holt 136. S. P. 1253.

But by the 27 Eliz. 2. cap. 7. per. 5. it is en-
acted, 1 That if any person or persons 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 committed; but the persons or persons so robbed, shall be held hundred, and have a right to an action for the said robbery, any law to the contrary notwithstanding. Nevertheless the inhabitants of the counties and hundreds (after notice of any such robbers to them, or some of them given, or after hue and cry for the same brought,) shall make or cause to be made forthwith and perfect after the offen-
dive hath been committed, as in the 27 Eliz. is provided; upon pain of forfeiting the King's Majesty, his heirs and successors, as much money as might have been recovered against the hundred by the party robbed, if this law had not been made.

It is clearly agreed, that for a robbery committed in the night the hundred shall be charged because they cannot have presumed to have notice thereof, so as to be able to apprehend the robbers. 7 Co. c. 6. aIIitto's case. 2 Inst. 569.

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, as in the day-time, the evidence it turns out to be committed in the night, it cannot be a verdict. Carth. 71. Com. 150.

Alfo it is needful 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 be proved, that if upon the evidence it turns out to have been committed in the night, he cannot have a verdict. Carth. 71. Com. 150.

Alfo it hath been said, that if robbers drive or oblige the waggoner to drive his waggon 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. 263. Farrii. 159.

By the statute of Winchester it is enacted, 1 That if the robbery be done within the division of 100 hundreds, both the hundreds and the franchises within them shall be an-
swerable.

If robbers assault a person with an intent to rob him in the hundred, and he escapes and flies into another, whether he be pursu'd by the robbers, and there robbed, the left hundred shall be liable. Hatton 125. Dean's cafe; per cur.

So where by special verdict it was found, that the plaintiff was travelling in the highway in the hundred of A. where he was first 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 the robbery was committed, and not before. 2 Salk. 614. Farrii. 157. S. C. Cooper v. The Hundred of Bispham.

If one be taken in the hundred of A. and carried into the hundred of B. in a house there, viz. a manufac-
ture-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 cases not being provided for by the statute. 2 Salk. 614.

By the 27 Eliz. cap. 13. par. 2. Reoiting that the in-
habitants of the hundred of A. do not profess the law and cry brought to them, because those hundreds only are liable in which the robberies have been committed, it is enacted, 1 That the inhabitants and reeves of every or any such hundred (with the franchises within the precinct thereof,) wherein negligence, fault or defect of pursuic and truth fail after due notice to be, shall be, shall answer and satisfy the one party 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 franchises therein, in which any robbery or felony shall at any time hereafter be committed or done; and that the same money and may be recovered by action of debt, bill, plaint, or informations in any of the Queen's Maj-
ey's courts. 4 Salk. 121. If the hundred of A. kept the clock 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 robbed shall be, without naming the christian name or surname of the said clerk of the peace, which money so recovered shall be passed upon of or by the inhabitants of the said hundred where any such robbery or felony shall be com-
dited or done.

4. Who is to bring the action, and make oath of the robbe-
ry; 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 it may maintain an action for it against the hundred, but then the serv-
vant must make oath that he knew not any of the rob-

If a servant be robbed in his master's absence, may himself maintain an action against the hundred, and may declare that he was polled ut de bonis suis propriis, &c. And though the jury find that he was robbed of his master's money, yet shall he recover; for the servant is polled ut de bonis suis propriis, against all, and in re-
spect of all, but him that hath the very right. 2 Salk. 613. Mod. 610. Com. 150. S. C. Combs v. The Hundred of Bradley, S. C. 3 Salk. 55.

The servant being robbed may bring an action against the hundred: And though the judge find that part of the things belonged to the master, and part to the serv-

vant, he shall recover for the whole. 1 Brown 155. 3 Salk. 154. S. C. Card 1.

If a servant be robb'd in the presence of the master, the master must sue; and the oath of the master is suf-

icient, 2 Salk. 613. per cur.

By special verdict it was found, that the plaintiff sent his servant to Smithfield market with fat cattle, where he sold them for 156l. and sealed up 156l. in four bags, and delivered them to J. 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 94l. taken from the quaker, he could not, for want of an oath according to the statute; and that the oath being enjoined merely for the benefit of the hundred, who were opprobred by pretended robberies, the court could not depart from the express words of the statute. Carth. 145. 2 Salk. 613. 1 Show. 94. 3 Mod. 287. S. C. Aitken v. The Hundred of Ellham.

But it seems, the servant who delivered the 156l. 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 for this time. Carth. 146. 1 Brown 146.

One Jones and his wife and servant, traveling to-
gether, were all robbed of his money, and Jones alone brought the action for the whole money against the hun-
dred, as well for what was taken from his wife and ser-
vant as from his own person, and he alone, without his wife or servant, made oath of the robbery; all which was found upon a special verdict, 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 none of the robbers whose name was Lene, yet Jones had his judgment. Carth. 146. Jones v. Hundred of Bromley, 5 Salk. 646.

So where one Bird a lacentam of Colliton in Devon-
shire, in coming to London with his servant, they left the usual
usual great road between Brecon and Hammersmith, and rode through a by-lane near Sejancat Magan's house, to avoid the duft, and in that lane the veflent 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 1000l, and Bird the man alone made oath of the robbery, and brought the action; and by the opinion of the Ch. J. Holt the oath of the master was fufficient, becaufe being prefent, the goods were in his pofterion; for the pofterion of the veflent in the presence of his master is in the law as good as that which comes Bird recovered 1000l, and had execution. 

17 Bird v. The Hundred of Offynline cited.

If A. and B. travelling together are robbed of a fum of money, to which they are both jointly intitled, they may both join in 27 against the hundred; 17 if they had defparate and diftinct interests. Dyer 370. p. 59.

By statute 27 Eliza. cap. 13. par. 11, it is enacted, That no perfon or perfons that shall happen to be robbed shall have or maintain any action, or take any benefit of the tates which make the hundred liable, except the fame perfon and perfons to whom robbed, with as much confidence as if they were fome of the inhabitants of fome town, village, or hamlet, near unto the place where any fuch robbery shall be committed.

In the construction of this claufe of the statute it hath been held, that the word shall be construed to mean happen.

That if a perfon be robbed in a high way in divers hundreders, he need not give notice to the inhabitants of each hundred, but notice to either of them is fufficient. Cros. Jac. 1759. Etfer v. The hundred of Speckner and Jefuswer, adjudged.

That alleging notice to have been given at a village near the place of the robbery was committed is fufficient, though fuch village happens to be in a different county; for that ftrangers are not obliged to take notice of the division of counties. Cros. Car. 41. adjudged, or in a different hundred. Cros. Car. 379. adjudged.

That though it be the belt course to allege, that notice was given at the place where the robbery was committed, or at fome village near the place, yet that notice near the hundred, or near the division of the hundreds where the robbery was committed, is fufficient; and that this fhall not be intenfed the most remote part of the hundred, efpecially after a verdict. Cros. Car. 41. adjudged.

If feveral perffons are in company at the time of the robbery, it is faid, that notice given by any one of them is fufficient. Show 94.

It hath been refolved, that though the notice given be five miles from the place where the robbery was committed, that it is fufficient; the reafon whereof is, because that the party, who is a frustrer to the country, cannot have conuenance of the neareft place or town. March 11. Sir John Compton's cafe.

Also if the perffon robbed give notice with as much conuenient fpeed as may be, though he be otherwise remifs in not pursiuing the robbers, or refuseth to lend his horse for the commiѕsion of the tates of Withe, or 27 Etfer either of them, unless he, the or they fhall, over and besides the notice already required by the laft of the above-mentioned tates to be given of any robbery, with as much conuenient fpeed as may be, alter any robbery on him, her or them commiѕs, give notice thereof to one of the confables of the hundred, or to fome confable, borf-burthen, or any other inhabitant of fome town, parih, village, hamlet or tithing, near unto the place where fuch robbery fhall happen, or fhall leave notice in writing of fuch robbery at the dwelling houfe of fuch confable, or declaring in fuch notice to be given or left as afofained, fo as the nature and circumstances of the cafe will admit, the felon or felons, and the time and place of the robbery, and also fhall, within the space of twenty days next after the robbery committed, caufe a publick notice to be given thereof in the London Gazette, in a laſt likewise defcribed, as far as the nature and cir cumstances of the cafe will admit, the felon or felons, and the time and place of fuch robbery, together with the goods and effects, whereof he, the or they or were robbed.

5. Before whom the oath must be taken, and where the party may give bond for payment of costs, in cafe he does not prevail.

By the 27 Eliza. c. 13. par. 11, it is enacted, "That the party robbed fhall not have any action, except he or they fhall file, within twenty days next before fuch action to be brought, be examined upon his or their corporal oath, to be taken before some juftic of the peace of the county where the robbery was committed, inhabiting within the faid hundred where the robbery was committed, or near unto the fame, whether he or they do know the parties that committed the faid robbery, or any of them, or that shall happen to be robbed, or any of them, that then he or they do confefs, shall before the faid action be commenced or brought, enter into fufficient bond by recognizance before the faid juftic before whom the faid examination is had, efpecially to prove the fame perfon and perfons as have committed the faid robbery, by indictment or otherwife, according to the due courfe of the law of this realm."

In the construction of this claufe 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 or they cannot be induced to know them afterwards, it is not material. March 11.

It was holden by three judges against one, that the party's fwareing that he did not know the robbers, without adding, nor any of them, is not fufficient; becaufe not purfuant to the statute, and becaufe on fuch equivocal oath the party cannot be purified for perjury. May 21. Bateman's cafe. 3 Lev. 328. S. P.

It hath been adjudged, that the oath may be taken before a juftic of the county, though not in the county at the time of administering it; as where a robbery was committed in Berks, and a juftic of that county refiding in London, the party was from before him according to the statute, London, and at the faid juftic for the fentence only as a ministerial officer, and as appointed by the statute, and not in a judicial capacity as a juftice of the peace. 1 Jen. 239. Heter v. The hundred of Bemfert.

If in an action on the statute of hue and cry it be alleged, that the oath was taken before a juftice of peace of Yorkshire, this will be fufficient, altho' objected, that there is no fuch juftice; becaufe that in every riding they have feveral commissions. See 2 Sid. 45.

As to giving bond for payment of costs, by Stat. 8 Geo. 2. cap. 15, it is enacted, "That before any action shall be commenced the plaintiff shall not be nolus for his action for this, nor the hundred be excufed. March 11. 2 Leoni. 8. S. agreed per cur.'

And now by the 8 Geo. 2. cap. 16. felt. 1, it is furer enacted, "That no perfon shall have or maintain any action against any hundred, or take any benefit by virtue of the statutes of Withe, nor 27 Etfer either of them, unless he, the or they shall, over and besides the notice already required by the lat 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 confables of the hundred, or to fome confable, borf-burthen, or any other inhabitant of fome town, parih, village, hamlet or tithing, near unto the place where fuch robbery fhall happen, or fhall leave notice in writing of fuch robbery at the dwelling houfe of fuch confable, or describing in fuch notice to be given or left as afofained, so as the nature and circumstances of the
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 forfeit, such forfeit shall immediately certify the former bond, and such certificate shall be delivered by the party or parties robbed to the said chief clerk or secon- dary in the court of King's Bench, or his or their depu- ty, or to the flaxer of the said county wherein such 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; 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 flaxer, or his deputy, before any procefs shall issue for the commencement of such suit as aforesaid; and such chief clerk, secondary, flaxer, or clerk of the Pleas, or their respective deputies, or the said flaxer, shall not take any greater fee for making such bond than five shil- lings and over and above the flanp duties, nor shall any sher- riff take any greater fee or reward for making, nor shall any such clerk, secondary, flaxer, or clerk of the Pleas, or their respective deputies, take any greater fee or re- ward for receiving and filing such certificate, than two shillings; and such chief clerk, secondary, flaxer, or clerk of the Pleas, or their respective deputies, and the said flaxer, are hereby required to de- liver over gratis (upon reasonable requert made for that purpose) all and every such bonds, to be by them respec- tively taken pursuant to this present act, to the high confable or high constables to whose use the same shall be taken as aforesaid.

6. 'At what time the action is to be brought; what evi- dence will maintain it, and what shall exceed the hundred."

By the 27 Eliz. cap. 13. par. 9. it is enacted, That no perfon or persons robbed shall take advantage of the statutes, to charge any hundred where any such robbery shall be committed, except he or they so robbed shall commence his or their suit or action within one year next after such robbery shall be committed.

In the construption whereof it hath been held, That if a peron be robbed the 9th of October 13 Juxi, and so laid, and the yeft of the wrt be the 9th Octob. 14 Juxi. 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, such conditions were done in protection and the inrolling of deeds, which have always received a benign interpretation. "Hib. 159, 140- Mor 578, pl. 1233. Y Brvnd. 156. S. C. Norris v. Hundred of Gaudty.

In an açion on the statute of hue and cry, the plain- tiff made oath according to the statute, and within twenty eight days brought a new one, without making any oath a new, or entering any continu- ances 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 provision in the statute would be of no manner of purpose. "Sis. 139. "Y Rob. 464. S. C. Newman v. Inhabitants of Stafford."

An açion 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 50 miles from the place,) allo that he made oath that he di not know any of the perons; the jury adjourned to record, and the court appeared at the bar ready to try it; but being for other business ad- journed to another day, the plaintiff observing his mistake moved to amend, by declaring of a robbery on his ser- vant, &c. and it appearing that the year in which the açion must be brought was expired, and consequently the açion must be forfeited if not allowed, the court, after long debate and consideration of former precedent, ad- mitted him to amend. "3 Lev. 347. Beverstof v. Hundred of Barham and Soms."

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 collateral 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. "2 Lev. 21, that in an action against the hundred, no inhabitant of the hundred could be a witness, because he was concerned in interest. "1 Vent. 3, 1 Abd. 73. 2 Rb. 73.

But now by the 8 Geo. 2. cap. 16. reciting, That by the law then in being, the peron or persons robbed may bring an açion in right of the said robbery to be brought against the hundred, as witness to prove the theft, robbery, or other injury, 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 behal of the said hundred, by reason of the interest he or she may have in the consequences of the said açion, which is commonly very considerable, therefore it is en- acted, "That in any açion already brought, or to be brought, against any hundred, any peron inhabiting within the said hundred, or any franchise thereof, shall be admitted as witness for or on behalf of the said hundred, in the same manner as if he or the were not an inhab- itant thereof, but rejudged in any other hundred what- ever."

By the statute of Winton 25 Ed. 1. cap. 1. & 28 Ed. 3. cap. 11, the robers must be taken within forty days after the robbery committed; also by the said laws it was necessary that all the robers should be taken, to excuse the hundred, in 4 Lev. 509. 3 Lev. 320. Dyer 37c. 4. Co. 2. 1 3. But now as to this latter matter, by the 27 Eliz. cap. 13. par. 8. it is enacted, "That where any robbery is, or shall be hereafter committed by two, or a greater number of malesactors, and that it happen to be entered in the former record, or entered in their record, or accroding to this act, that then, and in such case, no hundred or franchife shall in any wife incur or fall into the penalty, lets or forfeiture mentioned either in this present act, or in any of the said former statutes, although the refidue of the said malesactors shall happen to escape and not to be apprehended; any thing in this stat- ute, or in the said former statutes, to the contrary not- withstanding."

If a robbery be 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 justice of the peace, who charges him with the robbery, and he unanim& declared that he shall not be apprehended, 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. "1 Vent. 118, 325. Rym. 221, 2 Lev. 4. S. C. Methwyrn v. Hundred of Thirleworth."

If hue and cry be made towards one part of the county, and an inhabitant of the hundred apprehends one of the robbers within another, this is a taking within the statute. "1 Vent. 118, 119. per Hole Ch. 1.

By the 8 Geo. 2. cap. 16. it is enacted, "That no hundred, or franchife therein, shall be chargable by virtue of any of the statutes, if any one or more of the fe- nators, or any one or more of the inhabitants of the said county, 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 that the said robbers may not go away with impunity, it is enacted, "That any peron or persons, who shall ap- prehend such felon or felons within the time herein be- fore limited for that purpose, whereby the hundred hath been actually indemnified or discharged from such açion as aforesaid, shall, upon due proof thereof, upon oath made before two judges of the peace, (which oath the said justices are hereby also empowered and required to administer,) be intitled to the reward of 10 l. which
fam shall be raised upon the hundred by a taxation and
affiliation, 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 said, levied and collected; and such
furnum shall be so raised and levied, to the use and benefit
of the then inhabitants, or to whom such tax, taxation and
affiliation shall be had or made as aforeaid; which money to
be paid shall by the justices, or justices, for receiving the same,
be delivered over (upon request made) unto the said in-
habitants, for whose use the same was collected.

And it is further enacted, par. 7. "That the like taxa-
tion, affiliation, levying by distress and payment as
afoforeaid, shall be had and done within every hundred
where default or negligence of purfuit, and •freth but
not to the benefit of all and every inhab-
tant and inhabitant of the same hundred,
so that the same may not to the use of
any such person or persons, who shall at any time hereafter, by virtue
of this present act, have any damages or money levied to
them, or for to the payment of the same money, or half of the
money, recovered against the said hundred where any
robbery shall be committed."

It hath been held, that a person occuring lands in an
hundred, although he hath no house or dwelling
there, is an inhabitant within the meaning of the
act, for that otherwise the statute might be eluded.

And now for the more equal rating and levying the
money, for which the hundreds are chargeable, by the
8 Geo. 2. cap. 16. it is enacted, That no process
for appearance in any action to be brought upon the said
Figures, or either of them, against any of the said
inhabitants, or persons favored on any inhabitant thereof, five only upon the high
contable, or high constables of the hundred wherein the
robbery shall happen, who is and are hereby required to
cause public notice thereof to be given in one of the
principal market towns within such hundred, on the next
market day after they shall be served with the same,
or if there shall happen to be no market town within such
hundred, then in some paroch church within the hundred,
immediately after divine service, on the sunday next
after his or their being favored with such process; and he or
they is and are also empowered and required to enter or
cause to be entered, an appearance in the said action, and
also to defend the same for and on behalf of the inhab-
itants of the said hundred, as he or they shall be advised:
and in case the plaintiff or plaintiffs in such action shall
recover and obtain judgment therein, that then no pro-
cess or execution shall be served on any particular inhab-
itant or inhabitants of the said hundred, or any fem-
 punishable within the said hundred, or be
so made upon every hundred, parish, village and hamlet, for and towards the payment of such
taxation and affiliation, as shall be so made upon every
hundred, parish, village and hamlet, as aforeaid, by the
said justices: And that if any inhabitant of any such
town, parish, village and hamlet, be obliquely refuse and
deny to pay the said taxation and affiliation, for the
contable, constables, head-constable, or head-
borough, taxed and afflicted; that then shall and may be
lawful and for the said constables and head-constables, and
every of them, within their several limits, rateably and propor-
tionably, to tax and afflict, according to their abilities,
every inhabitant and dweller in every such town, parish,
village and hamlet, for and towards the payment of such
taxation and affiliation, as shall be so made upon every
such town, parish, village, and hamlet, as aforeaid, by the
said justices: And that if any inhabitant of any such
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every of them, within their several limits, rateably and propor-
tionably, to tax and afflict, according to their abilities,
every inhabitant and dweller in every such town, parish,
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taxation and affiliation, as shall be so made upon every
such town, parish, village, and hamlet, as aforeaid, by the
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deny to pay the said taxation and affiliation, for the
contable, constables, head-constable, or head-
borough, taxed and afflicted; that then shall and may be
lawful and for the said constables and head-constables, and
every of them, within their several limits, rateably and propor-
tionably, to tax and afflict, according to their abilities,
every inhabitant and dweller in every such town, parish,
village and hamlet, for and towards the payment of such
taxation and affiliation, as shall be so made upon every
such town, parish, village, and hamlet, as aforeaid, by the
said justices: And that if any inhabitant of any such
town, parish, village and hamlet, be obliquely refuse and
deny to pay the said taxation and affiliation, for the
contable, constables, head-constable, or head-
borough, taxed and afflicted; that then shall and may be
lawful and for the said constables and head-constables, and
every of them, within their several limits, rateably and propor-
tionably, to tax and afflict, according to their abilities,
as the costs and damages of him, or them recovered shall amount to, and to the use and benefit of the said high constable or high constables, for so much as his or their expenses in defending the said action shall amount to, of which the said high constable or high constables shall give in an account, and make due proof upon oath, to the satisfaction of the said constables, before any such constable or constables shall be made for the reimbursement of such high constable or high constables (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, and to be recovered as such action shall be brought in which the said high constable or high constables shall cause to be taxed for that purpose.

And it is further enacted, "That the several sums of money, which shall be so rated and assessed, and levied and collected as aforesaid, for the reimbursement of the expenses necessarily sustained by any high constable or high constables in defence of an action brought against the hundred upon the statutes above-mentioned, or either of them, in case of any judgment given against the plaintiff or plaintiff, shall be paid within ten days after such collection, unto the said justices, or one of them, to the use and benefit of such high constable or high constables, to whom the said justices shall, upon request, pay and deliver over the same."

And it is enacted, "That the justices of peace, by whom such taxations and assessments as aforesaid shall, in pursuance of the said statute made in 27 Eliz. and also of this present act, be made, shall limit and appoint, at their discretion, some certain reasonable time within which such taxations and assessments shall be levied and collected, which time shall not exceed thirty days; and also that every such officer or officers, who are to levy and collect such taxations and assessments as aforesaid, 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 justices, and also to the said plaintiff, in such manner as the same shall be made, or the several cases herein-before-mentioned are respectively directed to be paid, within the respective times herein before limited for such payment thereof; every such officer shall, for every such refusal or neglect, forfeit double the sum appointed to be by him levied and collected as aforesaid."

By stat. 22 Geo. 2. cap. 24. No person shall recover against any inhabitants of any hundred, in any action on the statutes of hue and cry, more than 200l. unless the persons robbed, at the time of such robbery for which such action is brought, be in company two at least, or the robber be a stranger."

By stat. 22 Geo. 2. cap. 46. 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 8 Geo. 3., cap. 16. and upon the said justices shall as is directed by the said act, cause a taxation to be made and collected for paying the costs 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 fees being taxed, and the amount of the bill being first taxed, and the sums so collected shall within the time by the said act limited be paid to the sheriff, and by him paid over to the persons intitled to the same, without deduction or fee.
Rolle of parliament, etc. is manufactured registers or rolls of the proceedings of our old parliaments. For before the use of printing, and till the reign of Henry VII. our statutes were all ingrained in parchments, and by virtue of the King's writ to that effect (purposely) proclaimed openly in every county. In their rolls 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, etc. See Nicholls's Eng. Hist. Libr., Par. 3. p. 47.

Rolle of the Temple. In the two Temples is a roll called the Calves-head roll, wherein every bitcoin is taxed yearly at 2s. every barrister at 1s. 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 Exchequer-term. Orig. Jurid. fol. 190. b.

Rome, The King and the great men to aid one another in prosecuting such as due to Rome, 38 Ed. 3. c. 2. 4.

None shall pay more for fruit than was anciently paid, on general forfeiture, 6 H. 4. c. 1.

All the dependence on the fee of Rome abolid, 25 H. 8. c. 19 to 20. 28 H. 8. c. 16.


Bishops presented by the King may be consecrated by an archbishop, or two bishops, 25 H. 8. c. 20. f. 1.

No frift fruits, etc. to be paid to Rome, 25 H. 8. c. 20. f. 3.

Peter's prelacy and other impostions payable to Rome abolishe, 25 H. 8. c. 21.

The penalty of suing for Rome for dispensations, 25 H. 8. c. 31. f. 22.

The effect of bulls granted to monasteries, 25 H. 8. c. 2. f. 25. 36.

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, Agnus dei, etc. from Rome, 13 El. c. 2.

Concealing bulls, misprision of treason, 13 El. c. 2. f. 5.

Withdrawing any to the Romish religion, or being withdrawn, high treason, 25 El. c. 1.

The penalty of saying or hearing mass, 23 El. c. 4. f. 4.

Jesuits and priests banished, 27 El. c. 2.

A popish priest, born a subject, being within the realm, treason, 27 El. c. 2. f. 3.

Subjects in popish ceremonies abroad not returning, guilty of treason, 27 El. c. 2. f. 5.

Sending relief to popish ceremonies prohibited, 27 El. c. 2. f. 6.

The penalty of not discovering a Jesuit priest, 27 El. c. 2. f. 13.

Romaquecitae, Were pilgrims so called, because they travelled to Rome on foot. It is a word mentioned in Matt. Par. 500. a. 1500. and in other historians.

Roman-Boat (Romebich vel Romefey, Romefey, alias denuo Sanctus Petri et S. Exequer). It is composed of Rome and Sest, from the Sax. Sesta, symbolum. Acts. Wifam. says, It was Conventus Sappholes, a quo nos, res, res archippeficus vel epifopus, abas vel prout, aut quibus in rebus immuni erat. 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 fifth of August. Camden in his Brit. wys, offers; S. Exequer, the Sestum, the Sesta, the Romena, and Hirathwyfey. This payment was abrogated 25 H. 8. 25. etc. & 2 P. & M. but utterly abolished 1 El. 1. See Spelman's Glossary, verbis Romefey, Romefay, Romefey. 7 Y
This mark of devry was a burthen and a scandal to the Engliſh nation. Our free-born ancesors often complained of it. It was one of the complaints of grievances in parliament, 8 Hen. 1, A.D. 1266, when the King illed out this writ of robbery: Rex archipelpicae, epippli, abbatibus, oneribus et publicis, tuta eorum clementia, Albinam convocati faltem. Conquerante uniusse ciuitate, baron, usum & absum fidelium normorum, aureius quod sum u EXPORTIS in laetum graecum primitu, sed in toto regni regni interdico dispensandum faper Romice pratrer confuetudinum pretio.—Mandamus.—Futura regni juriscripta. Servit.—Telle me ipso et Ebor. 26. die Maii, anno regni noviti, 8. Cart. 8. Jo. m. 1. Cowell, edid. 1727.

Road of Land, (Rrodu torre,) the fourth part of an acre. 5 Hen. cap. 5.

Book of Moderns, (See Titles.)

Rapes, may be imported duty-free, 11 Geo. 1. cap. 7, sect. 10.

Rigs, A kind of rufhes, which some tenants were obliged by their tenures to furnish their lords with. Cowell, edid. 1727.

Riotment, A low warry waye of places and rufhes: And hence the covering of houses with a thatch made of rufhes, called riotment. 4 H. 8.

Robsland, heathy land, or land full of lig; also water- or moorish land, from the Br. Rhos, i.e. Planities irrigue. 1 Ind. fol. 3 a. & Camb. Brit. fol. 190.

Rohenderbruch, (Six. Hrgerster,) Under this name are comprehended oxen, cows, fliers, heifers, and such like house flocks. 6 Geo. 2. cap. 2.

Rotulus Wintoniar, Domedal book so called, because it was of old kept at Winchester. See Domedal. Stelmann in his glossary says, There was another roll called ratul Wintonae, made long before by that King Alfred, concerning which, hear Ingulphus speaking of Domedal book. Talem (says he) Rotulum & multum aedificium, or condendum Rex Alfredus, in qua istam terram Anglice per comitatus, centurias, & decuriae descriptam, &c. Rout (Rota, torae, coher,) A company or number, but in a legal sense signifies an assembly of three persons, or more, going forcibly to commit an unlawful act, tho' they do it not, Wis. Synod. part 2. tit. intendments, sect. 85. says, a rout is the fame which the Germans; yet call rait, meaning a band, or great company of men gathered together, and going to execute, or indeed executing any riot or unlawful ait. But the statute of 18 E. 3. 8. slut. 1. cap. unies, which gives proceeds of outlawry against such as bring rait into the preface of the justices, or in affray of the people; and the statute of 2 R. 2. 8. 3. 4. 8. 9. 10. & 11. 12. which makes great riot after unlawful fashion into lands, and beat others, &c. do seem to understand it more largely. Bru. tit. Rait 4. 5. So that a rout seems to be an unlawful assembly, and a riot the disorderly fact committed by such unlawful assembly. Howebeit two things are common both to riot, rout, and unlawful of- fensibly. The one, That three persons at least be gather- ed togerether. The other, That being together they do disturb the peace, either by words, thwe, of arms, turbulent gesture, or actual violence, &c. Lamb. Eiren. lib. 2. cap. 5. See Riot.

Royal Affent, (Regnis affensus,) Is that assent which the King gives to a thing formerly done by others, as to the death of the French King, or the death of any Duke or Bishop; which assent given, then he sends a special writ for the taking of faisly. The form of which you may fee in F. N. B. fol. 170. And to a bill pailed in both houses of parliament, Cramp. Jur. fol. 8. which affent in parliament being once given, the bill is indorsed with their words, Re Roy le velis. It pleafes the King. But if he refuse to agree to it, then the bill be indorsed, i.e. The King will not affent. Cowell, edid. 1727.

Royalties, (Regalia vel regaliatres,) Are the rights of the King, jura Regis, otherwise called the King's Prerogative. Some of these are such as the King may grant unto common persons; some go high that they may not be separted from his crown prerogative, as the Civilians call it, though cumulative they may. See Bredeten, lib. 2. cap. 5. and Mathaen de affelliit upon the title of the fruits, soe few regalos, where he reckons up twenty-five special particulars of royalties. See also Horseman's Commentaries in lib. 2. Feudor. cap. 50. and fees Pye-Trages and Regalia.

Runes, Streams, currents, or other usual passages of rivers and running waters. Cowell, edid. 1727.

Routton, (town of) Reduced to one parish. 32 Hen. 8. c. 84.

Ruin, In what ships to be imported, 12 Car. 2. cap. 8. 8. 9. Importation of it from the Netherlands, or Germany; how prohibited, 13 & 14 Car. 2. cap. 8. 10. To what duties liable on importation, 14 & 15 M. cap. 5. sect. 2. Bringing it from Scotland how rewarded, 12 Anc. 1. c. 2.

Rubrics, May be imported duty-free, 6 Geo. 2. c. 7.

Rudiments-Day, (From the Six. Rudis, crux, and mals- dy, i.e. Feast-Day,) The feasts of the Holy Crofs; which this rule. The third of August, the invent. a of the crofs; the other is the 14th day of September, called Ho- ley-road-day; and is the exaltation of the crofs. Cowell, edid. 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 court may make 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 if a rule be made by the court grounded upon an affidavit, the other side may move the court against this rule. The third of August, the invent. a of 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 vacat- ing of it, than there were for the making of it, or not. 2 Litt. 249. Where a rule of court is made, and it is not drawn up and entered before the continuance day of the cause, the third of August, the invent. a of the rules will not draw it up afterwards until the court be moved, and shall again order it to be entered. Pash. 1656. For breach and contempt of a rule of court, an attachment lies; and if a rule of court is made betwixt 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; nor for disobeying a rule at nisi prius, till it is made a rule of court; nor for disobedience of a rule, if he be not entered. 1 Saith. 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 grant any prisoner in the King's Bench or plee prisons, every day the court fis, to appear at large, if such prisoner hath business in law of his own to follow. 2 Litt. Ab. 493.

Run. See Brand, Plantations.

Runner March. King Hen. 3. granted a charter to Runney March, in the county of Kint, empowering twenty-four men thereunto chosen to make dethres equally upon all those who have lands and tenements in the laid march, to repaire the walls and watergates of the same, and all the dangers of the fee. And there are several laws and customs observed in the laid march, establised by ordinances of justices therto appointed, in the 42d year of King Hen. 3. the 16 Ed. 1. the 33 Ed. 3. &c.

Runners, Spreading such as are salphic, is criminal and punishable by Common law. 1 How. P. C. 234. See 15 Fin. Ab. 1727.

Runners, (from Ranca,) Land full of brambles and bushes. 15 Fin. fo. 5 a.

Runnels and Runnins, Is ufed in domelad (fays Spelman) for a load-horse, Equus operarius colossus, or a jumper-horse; and sometimces for a cart-horse, which Chaucer,
Sac and Trade rufca broach for I. And if jh fies archdeaconries or every quig gives edit. Antig. pag. 84. Brev. 2. 10 cap. 5. 6.

Sacrament, An Oath: The common form of all inquisitions made by a jury of free and legal men runs thus, "Qui dicit super facramentum fium. Whence poibly the proverbial offering to take the sacrament in affirming or denying, was first meant of attesting upon oath. Cathol. Study 1727.

Sacramentum atatis, The forfeice of the mafi, or what we now call the sacrament of the Lord's supper. For which communion, in the times of popery, the papish 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 poor, because he received the customary oblations. Paroch. Antiqu. 483.

Sarcifie, (Sarculgium,) Church robbery, or a seeking of things out of a holy place, whereby a person steals any vessels, ornament, or goods of the church: And it is laid to be a robbery of God, at least of what is dedicated to his service. 2 Car. 153. 154. See Clergy. Larceny, Robbery.

Sarclgium, Sacrilege, or an alienation to lay-men, and to profane or common purposes, of what was given to religious persons, and to pious uses. Our honest fathers 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, were all given to the knights hospitalers of Jerusalem, for this reason. No im us us crgeta contra donatorum voluntaten in aliis usus beneficamentis. Paroch. Antiquit. pag. 390.

Sartra, (Lat.) In old times called fagalron, and fagillum: now festoon.

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. Spec. Clig. And for the form thereof see Regil. 25. c. 26. a.

Breaking of safe conduct high treason, 2 H. 5. b. 1. c. 6. repealed, 20 Hen. 6. c. 11.

There shall be a confessor of peace and safe conduct in every port, 2 H. 5. b. 1. c. 6. 29 H. 6. c. 2.

Safe conduct not to be granted 1. Without naming the flims, mailers, &c. 15 H. 6. c. 3. 18 H. 6. c. 8.

All letters of safe conduct shall be inviolate, 20 H. 6. c. 1.

The chancellor shall redress perons having safe conduct who are robbed at fees, 32 H. 6. c. 4.


Safe-guard. See Satva gardia.

Safe-pledge, (Salubus plegius,) Is a security given for a man's appearance against a day affigned. Braddon, lib. 4. cap. 2. num. 2. where it is also called cerms plegius.

Sage-man, (from Saba, sabalia) Seems to signify saltele, or to give one a name. Lea, Hen. 1. c. 63.

Sagibaro, or Sagibari, The name that at first was called fiscalariis; for fagiboruni were curfew officers.
S A L

SAL

for public conviviums jus diecubat hieuis, diligitant, from whence also the name may be derived; for Sace or Siz signifies Canfum or item, and Bars, variam vel hominum, as one would say, in equum, a judge. Convell, edid., 1677.

Sagittar. A bearded arrow, such as we usually call a broad arrow. Id. ib.

Sagittaria. A sort of small vessels, or ships, with oars and sails. Id. ib.

Salt-clay. Directions for the true making of milder


British salt-clay to be encouraged by the commissioner

of the navy, 7 and 8 *IV.* 3. c. 10. sect. 14.

British salt-clay may be exported duty-free, 7 and 8 *IV.*

2. s. 39.

A duty on foreign salt-clay, and a bounty on British

salt-clay exported, 13 Geo. b. 1. c. 16, 10 Geo. 2. c.

27. sect. 5. 19 Geo. 2. c. 27. 27 Geo. 2. c. 18. f. 6. No

drawback on foreign salt-clay re-exported, 4 Geo. 2.

c. 27. f. 3.

Additional bounty on British exported, 4 Geo. 2. c. 27.

f. 3.

Directions for the making and marking salt-clay, 9

Geo. 2. c. 27. 24 Geo. 2. c. 57. f. 3.

Malls of flyers to make entry of their foreign flyels, 9

Geo. 2. c. 37. f. 1.

New flyels to have a suit of flyels of British clay, 9 Geo.

2. c. 37. f. 4. 19 Geo. 2. c. 27. f. 11.

Weight and measure of British salt-clay, 9 Geo. 2. c.

2. 19.

Duty on foreign made flyels, 19 Geo. 2. c. 27. 26 Geo.

c. 2. f. 3.

Sails from the East Indies excepted, 19 Geo. 2. c. 27.

f. 4.

The bounty on salt-clay exported, to be made good on

the old flyels applicable to incidents, 23 Geo. 2. c.

21. 26 Geo. 2. c. 32. f. 9. 27 Geo. 2. c. 18. f. 3.

A duty on Irish salt-clay imported, 23 Geo. 2. c.

32. f. 9.

The duties on salt-clay continued to 29 September 1771.

4 Geo. 3. c. 11.

Said a Secretary, For wil Magistratus Minijer, a tip-

flaff or fascient at arms, qui reus praevia in iudicium. It

may be derived from the Sax. SÆglju, Pagius, because they

to use a rod or fliiff of silver. Convell, edid., 1777.

Salarjy, (Salarium) Is a consideration or recompence

made to a man, for his pains or industry bestowed on an-

other man's affairs. *Joc. 3.* cap. 1.

The word Salarium at first signified the rents or profits of a

Salar, hall or house. In Gestis they now call the

feats of noblemen Salar, as we do halls. It afterwards

stood for any wages, fipend, or annual allowance. Convell,

edid., 1777.

Salar (salarium) Is the transferring the property of goods

from one to another, upon valuable consideration. And

if a bargain is that another shall give me 5 l. for such a

thing, and he gives me earneth, which I accept, this is a

perfect sale. *Wood* fob, 316. On sale of goods, if earneth be given to the seller, and part of them are taken away by the buyer, he must pay the residue of the money upon falling away the rest, because no other time is appointed; and 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 seller 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 seller ought to require him to do so; and then if he doth not do it in convenient time, the bargain and sale is dilided, and the seller may dispose of them to any other perfon.

1 Salk. 113.

An office 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 gene-
rally implied that the delivery be made immediately, and
payment on the delivery. 3 Salk. 61. Where one

agrees for fawes fold, the buyer must not carry them

away before paid for; except a day of payment is allow-
ed him by the seller. *Noy* 87. It is raid a perfect bar-
gain and sale between parties, will be good, though the

seller grants of an execution that is against him; and
doth sell the goods to prevent the falling of it upon them,

3 *Skep* *Abr.* 115. A sale may be of any living or dead

goods in a fair or market, be they whose they will, or

however the seller come by them; if made with the cau-
tions required by law: But if one sold my goods unduly,

and then claimed of an execution that is against him, and

do thi goods to prevent the falling of it upon them,

3 *Skep* *Abr.* 115. A sale may be of any living or dead

goods in a fair or market, be they whose they will, or

however the seller come by them; if made with the cau-
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however the seller come by them; if made with the cau-
tions required by law: But if one sold my goods unduly,

and then claimed of an execution that is against him, and

do thi goods to prevent the falling of it upon them,
The duty on salt, pr. lb. bullion 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 salt to be levied by the justices, 5 W. & M. c. 7.

f. 12. 9 & 10 W. 3. c. 44. f. 39.

The duty on salt made perpetual, 7 & 8 W. 3. c. 31.

Salt to be sold by retail by weight, at 26 pounds the bullion, 7 & 8 W. 3. c. 31. f. 44. 9 & 10 W. 3. c. 6.

Seventy-five pounds of rock salt to be deemed a barrel, 10 & 11 W. 3. c. 32. f. 2.

The duty on rock salt to be deemed a barrel, 1 An. R. 1. c. 21. f. 9.

Eighty-four pounds of foreign salt to be deemed a barrel, 1 An. R. 1. c. 21. f. 6.

Price of salt to be settled at the quarter-feetions, 7 & 8 W. 3. c. 31. f. 92.

The duty on salt made perpetual, 9 & 10 W. 3. c. 22.

1 An. R. 1. c. 2. 2 5 of 14 c. 14.

Salt works to be entered, 1 An. R. 1. c. 21. f. 2.

Officers may enter ships hovering on the coasts, 1 An. R. 1. c. 21. f. 7.

No homemade salt to be imported from Ireland, Scot- land, or Man. 2 

Drawback on exporting to Scotland, Man., Jersey, or Guernsey, 3 & 4 An. c. 14. f. 9.

Drawback to be allowed for salt lost at sea, in exportation to Ireland, 4 An. c. 12. f. 11.

Foreign salt to be collected and delivered upon payment of duty, 5 An. c. 12. f. 4.

Waite allowance on salt carried coastwise, 5 An. c. 29.

f. 4. 6 An. c. 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. 6 An. c. 12.

On beef and pork exported, 5 An. c. 29. f. 8.

Drawback on salt exported to Ireland, 5 An. c. 29.


Directions for the drawbacks on salt fish and fish and the admixture of salt, 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.

Duty on salt exported for the curing of fish taken in the North Sea, or at Ireland, 12 An. f. 2. c. 2.

Duty onullsing brine for curing fish, 5 Geo. 1. c. 18. f. 17.

Foreign salt shipped for the voyage and not consumed, to be entered, 5 Geo. 1. c. 18. f. 18.

Propritor of salt works to not act as justices, 5 Geo. 1. c. 18. f. 10.

Regulations for the importing Sotse salt, 5 Geo. 1. c. 18. f. 20.

Power given to the officers of cullums and salt to search any ship, 5 Geo. 1. c. 18. f. 19.

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 fish, 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 homemade salt taken off, 3 Geo. 2. c. 20.

Revised, 5 Geo. 2. c. 6. 7 Geo. 2. c. 6. 8 Geo. 2.

f. 12. 16 Geo. 2. c. 22. 18 Geo. 2. c. 5.

Salt for fish to be imported in ships of 40 tons, 3 Geo.

f. 2. c. 20. f. 17.

124. V. 112.
Satisfaction, Is the giving of recompence for an injury done, or the payment of money due on bond, judgment, &c. In which latter, it must be entered on record. 2 Litt. Ab. 495. Where money given one by will, shall be more than the amount of a debt, being more than that amount to; and where it is not so, the same is allowed. Prec. Chanc. 394, 305, 256. 2 Vern. 478. See Legatt. Satisfaction and annuities may be pleaded for involuntary treafu., &c. by flat. 21 Jac. 1. cap. 5. See Payment, and 19 Stat. 547. Sack, Is a face of time in which of old it was not lawful to take falmons, in Scotland, and the north of England, that is, from eftong on Saturday, till funning on Monday. Cowell, edit. 1727. Sackt, Is extraneous to a defult. This properly, when a man having made a defult in court, comes after and is tried, for a good cause why he did it, as imprisonment at the fame time, or of fuch like. Ralphson's Erit. verb. Sauer defult.


date, (from the Fr. Sang, fanguis, and fin, fines,) Is used by Briton, cap. 119, for the determination or final race of a defendant of kindred.

Sautnus, A hawk of a year old. Bradl. lib. 5. tract. 1. c. 2. par. 1.

Satureja. See Perrenhalia.

Stabuli, Wardens, was a word used by the wardens of Limey in Norfolk. Cowell, edit. 1717.

Stabilum, ad Scalum. The old way of paying into the Exchequer rents and fines; and by clasps, or clasps, &c. tender. George of Tilbury reports, that King William the First, for the better pay of his warriors, caufed the rents, which till his time had for the most part been anwnted in viufuits, to be converted in pecunia numera, and directed the whole in every county to be charged on the fhef, to be by him brought into the Exchequer; al- ding, that the fhiriff should make the payment ad scalum, hoc eft (as the foarfand author expounds it) feter- prater prater quamlibet numera lititem ftricti defants. For at that time fine-pence fuper-added made up the full weight, and near the intrinsic value. See Lechaf's Effay on Cun, pag. 4. This was agreed upon as well to be the common effimate or remeny for the defective weight of money, thereby to avoid the trouble of weigh- ing the money brought into the Exchequer. See Hale of Sheriff's Accounts, pag. 21.

Scalina, A quarry of pit for ftones, or rather flates for covering houses. Mon. Ang. tom. 2. p. 130.

Scandal. See Stabulum.

Scandalum magnatum, Is the special name of a flature, and also of a wrong done to any high perfonage of the land, as prelates, dukes, earls, barons, and other nobles; and also to the chancellor, treasurer, clerk of the Exchequer, &c. of the houfe, judges of one bench, or other, and other great officers of the realm, by falf news, or horrible or fable meffages, whereby debates and difcords between them the commen, or any scandal to their persons might arise. Stat. 2 & 3. cap. 5. and hath given name to a wall, granted to recover damages thereon. 2 Sir. 156.

At the time of making the law, on which this action is founded, the confitution of this kingdom was marital, and given to arms; the very tears were military, and fo were the fervices; as knight-service, eftalage-guard and eftalages; and by the provifions by writting words were revealed by the two, which often created fashions in the commonwealth, and endangerd the government itfelf; for in this kind of quarrel the great men, or peers of the realm, ufally engaged their vaflals, tenants and friends; fo that laws were then made againft wearing of treafeefed edges, and againft riding armed; &c. flat. 2 & 3. cap. 2. affection that the infidants shall not offer inftrument from then he produces the author of a fafe report. 2 Sir. 156.

3 Med. 156. The law on which this action is grounded, is the 2 Rich. 2. flat. 1. cap. 5. which enact, 'That of coun- selors, and other nobles and great men of the realm, and also of the chancellor, treasurer, clerk.
1. Who may bring this action, and for what words it lies.

2. Of the proceedings in this act.

It hath been held, that the King is not included in the words great men of the realm, as the statute begins with an enumeration of persons of an inferior rank. Also it hath been adjudged, that though there was no vicount at the time of making this statute, (the first vicount being John Beaumont who was created vicount, 18 Hen 6.) yet when created noble, though by a new title, it was intituled to this action on this statute. Cro. C. 536. Palm. 585. Vicount Sey and Seal v. Stephen. It hath been held, that the union a peer of Scotland may have an action on this statute, and that it is not necessary for him to allege that he hath a seat and voice in parliament; for the 5 An. e. 8. art. 23.

All signs of Scotland after the union shall be peers of Great Britain, and have rank and precedence, &c. be tried, &c. and enjoy all privileges of peers as the peers of England now do or hereafter may enjoy, except the right and privilege of sitting in the house of Lords, and the privilege depending thereon, and particularly the right of sitting upon the trial of peers. Cam. 439. Ld. Vicount Pakland v. Philip. But the contrary hereof seems to have been held in most of the cases on this head, and not without reason, as it would be to no purpose to make a law, and thereby to give a peer an action for such words as a common person might have before the making of the statute, and for which the peer himself had equally a remedy by the Common law; and therefore the design of the statute must be, not only to punish such things as import a great scandal in themselves, or fuch for which an action lay at the Common law, but also such things as favoured of any contempt of the persons of the peers or great men, and brought them into disgrace with the Commons, whereby they took occasion of provocation and revenge. 2 Mod. 156.

It hath been observed, that no action had been brought on this statute till 100 years after the making thereof, and that the first court which tried the case was the court of King's Bench, and the first suit was brought by Sir Richard Crafts, for that the said Richard had found a writ of forgery of false deeds against him; and it was held, that the taking out the writ being done in a legal way, and in a course of justice, the action did not lie. Keb. 26. 27. 2 Mod. 154. cited. Scan. Mag. was brought for these words, You have no more confidence than a dog; so that you have goods, you can not how you come by them; and held actionable.
Lord P. sent him, or that it was to take the purse feloniously; which last, in a case of an action by a common person, might be a good exception. 1 Lev. 277. 1 Sid. 434. 2 KB. 537. E. of Peterborough vs. Sir John Morant.

In these words, I value my Lord marquis of D. no more than I value the dog that lies there, without more debate adjudged for the plaintiff, but a writ of error was brought, pending which Proby was killed, but his executors after paid the money. 1 Sid. 213. 1 KB. 814.

1 Lev. 148. Marquis of Dorchester vs. Proby. So of these words, My Lord S. may say my ——, I care not a tunt ——, he keeps no bare, but a company of rogues about him; on no guilty plea, and a trial at bar, the plaintiff had a verdict & 100l. damages.

Psib. 27. Car. 2. in B. R. Lord Salisbury vs. Charles Arthur. It once lays of a peer, He is an unworthy man, and as against law and reason; an action of dam. Mag. lies, notwithstanding the words are general, and charge him with nothing certain; and so adjudged by North, Windham, and Scragg against the opinion of Atkins, who said the plaintiff extended not to words of so small and trival a nature, but to such only which were of greater magnitude, by which discord might arise, &c. and therefore the words horrible lies were inferred in the statute. Note; the rule laid down by the court in this case was, that words should not be construed either in a rigid or mild sense, but according to the genuine and natural meaning, and any thing in the context, to the common understanding of all men.


2. Of the proceedings in this action.

It is now clearly agreed, that tho' there be no express words in the statute which give an action, yet the party injured may maintain one on this principle of law, that when a statute prohibits the doing of a thing, which it done might be prejudicial to another, in such case he may have an action on that very statute for his damages.

2 Med. 152.

That tho' the action is to be brought taut pro domini rege genua pro se tupa, yet the party is to recover all the damages. 1 Peer Will. 690.

That if the words are actionable at common law, the peer hath his election to proceed on the statute, or at common law.

It hath been held, that this being a general law, the plaintiff need not recite it particularly, and that if he sets forth so much thereof as shews his case to be within the statute, it is sufficient. 1s Cor. 136. 2 Sid. 21. Frenc. 425.

That this is now settled that no new trial is to be granted in Sem. Mag. for excessive damages; which points seem to have been first determined in the before mentioned case of Lord Townshend v. Dr. Hughes, where the jury gave 4200l. damages. 2 Med. 151. 1 Med. 231.

In Sem. mag. the plaintiff declared, that the defendant spoke these words of him, My Lord of London is a bold, daring, impudent man, for sending heads of divinity to his clergy in these parts, contrary to law, ad dominum 200c. which sum the jury gave in damages. & Irish & William for the defendant moved for a new trial, in regard there was no proportion between the scandal and the damages, and likewise because there was no particular damage proved at the trial; the defendant also had made an affidavit that he was not worth 200l. at the time of the action brought, nor since: but notwithstanding the court refused to grant a new trial. Hib. 33 34 Car. 2. in C. B. B. Pop of London v. Edmund Higden.

It has been ruled, that in Sem. Mag. the defendant cannot justify, let the words be ever so true, because the action is brought put tom, in which the king is concerned; but it hath been held that the defendant may justify by proving the occasion of speaking for them, and thereby extinguish the meaning of them; this was done in Lord Cromwell's case. 4 Cr. 14. 2 Med. 166. Frenc. 220. Pijb. 17.

In Sem. Mag. the court will never change the Vene on the common affidavit that the words were spoken in another county, because a scandal raised on a peer of the realm reflects on him through the whole kingdom; and he is a person of so great notoriety, that there is no necessity to show the place where among his neighbourhood. Cart. 400. 2 Salt. 668.

As in the case of Vicecount Stanford v. Northum, where the action was laid in London, and the defendant moved to change the Vene, so that he was prohibited to stay in London, having been in arms against the king; but the meaning of the affidavit being a peer of parliament then sitting at Westminster, 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 as well on behalf of the king as himself. 1 Lev. 56. 1 Med. 574. Vid. 2 Med. 185. 2 Med. 216.

But the case of Lord Northfield v. Graham, the court in Sem. 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 Vene; but note, that the books which report and cite this case, mention it as a case 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 J. 10b. 1 St. 353. Sim. 45. 2 Shaw. 200.

It hath been held, that the statute, which appoints that actions of trespass in London shall be commenced in the Exchequer chamber, does not extend to Sem. Mag. 2 Med. 306. Also it hath been held, that the statute 27 Eliza. for bringing a writ of Error in the Exchequer chamber does not extend to this action. Cor. 395. 1 Sid. 143.

It hath been held, that in an action of Sem. Mag. special bail is not required. 3 Med. 41. Hals Rep. 640.

It hath been held, that no colt rage to be given the plaintiff on his obtaining a verdic. 2 Shaw. 507.

Scraborough. See HARBOURS.

Scrabage. (Scravum.) It is otherwise called Scawage, Scrawage and Snearting, may be deduced from the Saxon, Scawzen, offenders, and is a kind of tell or cullum excited 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 Scrattinges, and (in Mon. Anglic. 2 par. fol. 890.) in the charter of the city of Canterbury, 15 H. 7. 8. Scawenger. (From the Saxon Scawage, to scrape.) Two of every parish within London and the suburbs are yearly chosen into this office, who hire men called Rakers, and cart to clean the streets, and carry away the dirt and filth thereof, mentioned 14 Cor. 3 c. 2 p. 1. Cowell. edit. 177.

The duty of Scawengers, 2 Will. & M. 2. 1. 28. sect. 9. How appointed in towns, 1 Gra. 1. 2. 3. cy. 52. sect. 9. 2 Gra. 2. 18. f. 3. 9. Scrutition, (Saxon) A pyrate or thief. L. L. Edelth, rapit Brampton. Scrappa falls. An ancient measure of falt, the quantity now not known. Et quippe Scappas falls per annum de jainis meas de Wystafane, Mag. Angl. 2 par. fol. 824. b.

Structum. A barn or granary. It is mentioned in Ilsington, pag. 862.

Structurae, an ancient measure of weight, the quantity now not known. See Scena de vebre, signe, etc. verb. Scharstoren. A small duty or contribution: and some court-marry Men were obliged to pen up their cattle at night in the pound or yard of their Lord, for the benefit of their dung; or if they did not do so, they paid a small fine called Scharstoren or Scharspenny, i. e. Dung penny, or money in lieu of dung. Scharstoren. A small fine led by the money of Scharspenny, or Scharspenny, who collected the Scharspenny money, which was sometimes done with extortion and great oppression. Cowell. edit. 1772.
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If the defendant or plaintiff taketh his process of execution within the year, the judgment shall be void if he should not have recovered within the year, yet if he continue his fame, he may have execution at any time after the year.

2 Inf. 471. C. Liti. 290. b. and see 2 Leon. 77, 78, 87. 3 Leon. 259. 4 Leon. 44. 4 Sed. 59. 1 Keb. 159. 6 Mod. 288.

If the plaintiff delay the executing of a writ of inquiry till a year after the interlocutory judgment, he cannot have a new writ of fieri facias without a motion at fide Bar. Note; after such motion, and judgment revived by fieri facias, the defendant dies before execution, the plaintiff must sue for a new fieri facias, but may have it without motion, for the judgment was revived before. Salt. 396. Heroldy v. Barny.

After a judgment, if the plaintiff within the year sues a fieri facias, he cannot have a capias within the year till he hath a new judgment in the fieri facias. 1 Rel. Atr. 900. Trim. 13 Car. 1. Roberts v. Pilling.

3. Of the fieri facias on recognizances and statutes.

Recognizances and statutes are considered as judgments, being obligations solemnly acknowledged, and entered of record, and the fieri facias on those is the judicial writ and proper remedy the conufee hath; but herein we must distinguish between recognizances at Common law and statutes merchant, &c. for upon the former, if the conufee did not take out execution within a year after the day of payment assigned in the recognizance, he 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 Wifm. 2. cap. 49. by which the conussee hath a fieri facias given him to revive the judgment, and put it in execution, if the conufee cannot flip it by pleading such matters as the law judges sufficient for that end, such as a release, &c. but the conussee of a statute merchant, &c. may at any time sue execution on them without the delay or charge of a fieri facias. Lit. R. 89. That a capias lies not on a recognizance, but only a fieri facias. 1 Brown 33. C. Liti. 297. 2 Inf. 409. F. N. C. S. 17.

Also as to recognizances at Common law, and statutes and recognizances introduced by statute law, we must further distinguish, that if on the first the conufee dies before execution fued, his executor shall not sue it, even within the year, without bringing a fieri facias against the heir, within ten years had, because, if the conufee cannot flip it by pleading such matters as the law judges sufficient for that end, such as a release, &c. but the conussee of a statute merchant, &c. may at any time sue execution on them without the delay or charge of a fieri facias. Lit. R. 89. That a capias lies not on a recognizance, but only a fieri facias. 1 Brown 33. C. Liti. 297. 2 Inf. 409. F. N. C. S. 17.

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. 494. Salt. 273.

But though it seems agreed that the execution being flayed before the year and day, the plaintiff may not take out execution without a fieri facias. Yet it hath been held, that if the execution is aided by injunction, the execution of the defendant, yet the court will not take notice thereof.

6 Mod. 28. Salt. 322. and see infra, 3 John. 381.

If judgment be given in debt, and no execution found, the plaintiff may take an executia for a year, yet the plaintiff may after an award of an executia on the rule of the judgment as of the fame term with the judgment, and thence continue it by viuconstant non mutat brevis; so held on a motion to fet aside the execution, and through the court found that an executia 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 found to be the law of the court, and they ordered the execution to stand.

in this case he may have execution by fi. fa. or eleit within the year after the day of payment, tho' the year be from the date of the recognisance. 21 Ed. 3. 22 k. 1 Rob. Atr. 899, 900. 2 Inf. 471. 2.

If A. enters into a recognizance or statute, &c. to B. and the sum is made payable at three several days, at 20l. at each day, the whole debt being 60l. if the first day of payment is lapsed, the confuie may have execution for 20l immediately, and so for the reil as it becomes due, without waiting for the left day of payment, as he must have done if the debt had been due upon bond; and this holds as well on recognisances at Common law as upon statutes; and the reason is because these are in nature of three several judgments. 2 Rob. Atr. 458. Co. Litt. 292a.

If A. makes a recognizance, he shall have execution for every time that occurs after by fi. fa. or eleit within the year after the time incurred, tho' the year be part of the judgment, but not after the year within a fict. fa. 1 Rob. Atr. 900. 2 Inf. 471. Salt. 253, 600.

If two acknowledgments of recognizance be 100l. quilliet earn in fields, that is jointly and severally, the confuie may have several fi. fa. against the confuies upon this recognizance. 2 Inf. 395.

For more learning on this subject, see 4 Bac. Atr. and 19 Inst. Abr. tit. Sicre faction.

Sicrebar, The annual tax or prepayment paid to the sheriff for holding the affices or county courts.  — In primis pro quadam personne vocata Sicrewey annuatim 10 s. Eas. Paroch. Antiqu. p. 573.


Skeels, Are troublesome women, who by their brawling 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 breaking-bow. Gt. Ass. Kibb. 11. 2 Hen. P. C. L. 67.

Sect and Lot, (Sax. Sceat. part, &c. & Lat. i. e. Sort) signifies a customary contribution laid upon all subjects, according to their ability. Spec. Nor are these old words grown obsolete; for whoever in like manner (though not by equal proportion) are affiéled to any contribution, are generally said to pay Sect and Lot. Stat. 23 H. 8. cap. 9.

Sectal or Sectatale, Is where any officer of a forrest keeps an alchum within the forrest, by colour of his office, causing people to come to his house, and there spend their money for fear of his displeasure: It is compounded of sect and ale, which by transposition of the words is otherwise called an alebott. This word is used in the Charter of the Forset, cap. 8. Nullis forfetaria faciat Sectalata, vel bosus collegit, vel aliquam collectam factam, &c. W. Manwood 216.

Sectatale, Thoie tenants are said Sectatale, whose lands are subject to pay for.  Ab. Ang. tom. 1. p. 875.

Scotland, Merchandize of the flape not to be carried into Scotland, 27 Ed. 3. M. 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.

Merchandize carried to or from Scotland, shall be compelled at Berwick, or Carlisle, 2 Ed. 4. c. 8.

Sessemen 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. 16. 32 H. 8. c. 6. 1 Ed. c. 7. repealed, 4 Jac. 1. c. 1.

Commissioners appointed to treat with Scotland, 4 Jac. 1. c. 1. 2 Jac. 1. c. 3. Repeal of the hostile laws, 4 Jac. 1. c. 1.

Cemies committed in Scotland by English men, to be tried in the northern counties, 4 Jac. 1. c. 1. 1. 23. 25. 26. Englishmen committing cemies in Scotland to be sent thither, 7 Jac. 1. c. 1.

Pacification between England and Scotland, 16 Car. 1. c. 17.

Corn, salt and fith, may be imported from Scotland, 12 Car. 2. c. 18. f. 16.

Commissioners appointed to settle the intercourse of trade between England and Scotland, 19 Car. 2. c. 13. 22 Geo. 2. c. 9.

Commissioners appointed to treat of the union, 1 Ann. bl. c. 14. 3 Ann. bl. c. 37.

Relaxation 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 against peace and war repealed, 6 Ann. c. 2.

For improving the union, 6 Ann. c. 6. 7 Ann. c. 21.

Method preferred for granting licences to retail ale, &c. in Scotland, 29 Geo. 2. c. 12. f. 10. 56.

Arms. In the custody of suspected persons may be seized, 1 Geo. 1. c. 20. f. 12.

For disarming the Highlanders, 1 Geo. 1. c. 54. 11 Geo. 1. c. 26. 19 Geo. 2. c. 39. 21 Geo. 2. c. 34.

Sterlingfite included, 26 Geo. 2. c. 22. f. 2.

The use of the Highland drabs restrained, 19 Geo. 2. c. 29. f. 17. 20 Geo. 2. c. 51. 21 Geo. 2. c. 33.

The acts for disarming the Highlanders extended to particular parts of the shire of Stirling, 26 Geo. 2. c. 29.

Ball. Ball in criminal prosecutions increased, 11 Geo. 1. c. f. 11.

Bent. Prohibits of cutting bent in Scotland, 15 Geo. 2. c. 3. f. 9.

Bread. Aqua vitae excepted from duties, 9 Geo. 2. c. 23. f. 22. 19 Geo. 2. c. 12. f. 27. 24 Geo. 2. c. 40. f. 20.

Bread. Regulations to prevent adulteration thereof, 2 Geo. 3. c. 6.

Calendar. Courts of seisin and Exchequer, and markets, &c. Not to be continued according to the new calendar, 24 Geo. 2. c. 23. f. 4.

Cash. Carried from Stirling to Dundar exempt from duties, 8 Ann. c. 4. f. 3. 9 Ann. c. 6. f. 10.

Imported from Ireland liable to same duties as from England, 9 Ann. c. 22. f. 50.

Corporation. The act intitled anenices witchcrafts repealcd, 9 Geo. 2. c. 5. f. 2.

Corn. Power given to the judges to suspend prohibitory laws, 14 Geo. 2. c. 7.

Debenture on corn exported payable in three months, 26 Geo. 2. c. 15. f. 9.

Courts. The attendance of the nobility upon the circuit courts, discharged, 8 Ann. c. 16.

The act discharging the yule vacace repealed, 37 Ann. c. 13. this act repealed, 1 Geo. 1. c. 12. f. 28.

The safaries of the judges charged upon the customs and excise, 19 Geo. 3. c. 28. f. 8.

Circuit courts to be held once a year, 10 Ann. c. 33.

For the trial and admission of the Lords of Seissons, 10 Geo. 1. c. 19.

Court of Seission may adjourn in December, 3 Geo. 2. c. 32.

Court of Seisson adjourned upon 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.

Adovocation of causes under 12l. value discharged, 20 Geo. 2. c. 43. f. 28.

The Judges salaries augmented, 32 Geo. 2. c. 35. f. 22.

Judges improvered to make adjournments, 2 Geo. 3. c. 27.

Criminal. Persons who fett woods on fire, to be punnished as wilful fire-breakers, 1 Geo. 1. c. 18. 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, 3 Geo. 2. c. 32. f. 2.

Affections may be made for the charges of criminal protection, 11 Geo. 1. c. 26. f. 11.

Citation:
Laws of the cunnions extended to Scotland, 6 Ann. c. 26, s. 17. The crown may appoint further ports for the landing of goods, 6 Ann. c. 2, s. 18. For a treaty with the proprietors of sugar houses, 1 Geo. 1, c. 19, s. 19. The privileges of the sugar houses purchased, 8 Geo. 1, c. 4, s. 6. See Customs.

Edinburgh. A duty of 2 pennies Sots on ale, £. granted to the town, continued for 19 years, 3 Geo. 1, c. 7.


Court of Seffion to determine the claims of creditors, 31 Geo. 2, c. 16. Provisions for relief of vallals of estates annexed to the crown, 2 Geo. 2, c. 17. Funds. 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 person, 24 Geo. 2, c. 34. Season for killing game, 3 Geo. 3, c. 21. Hobbes corpor. Permons having committed any capital offence in Scotland, may be sent thither for trial, 31 Geo. 2, c. 2, f. 16.

Highways. Laws concerning the highways before the Union, confirmed, 5 Geo. 1, c. 30. Additional toll on wagons drawn by four horses, 32 Geo. 2, c. 15.

Hayes. Surveyors in Scotland to view houses, £. 21 Geo. 2, c. 10, f. 26. 26 Geo. 2, c. 7.


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.
for his voyage to the holy land, had a tent granted by the clergy, and Seate, three marks of every knight's fee, by the laity. Barow. Angiis, 1 Part. fol. 211. b. This was also levied by Henry the second, Richard the first, and King John. See Mileage.

Sedgwick (folio), a writ that lay for the King, or other Lord, for the term that held by knight's service, to serve by himself, or else to find a sufficient man in his place, or pay, &c., where the King intended to make a warlike expedition against the Scots or French. F. N. B. fol. 83. It is used in the Register Original, for him to recover Evesco of others, that hath either by service or fine lost the tenure to the King. 2. 46. b. See Acre. A French gold coin, value 3d. 4d., coined about the year 1427, in the reign of Henry the fifth. It comes from the French word Ecu, which signifies a crown, of gold money. Katherine, queen of England, had an assurance made her of fondy cattles, manors, lands, &c., severally named, and valued to the sum of forty thousand Scots, every two whereof were worth a noble. See Acre. Tenure. Encouragement to knights continuing dutiful, 1 Geo. 1. c. 20. 2 Geo. 2. c. 33. f. 17. The service of personal attendance discharged, 1 Geo. 1. c. 54. f. 10.

Therefore by ward-holding, &c., taken away, 2 Geo. 2. c. 50. & 51. Escheat on honouring and donation taken away, 2 Geo. 2. c. 50. f. 11. Tenures. To hold principal and gant entries, 25 Geo. 2. c. 48.

TENBILE. For relief where title-deeds were impleaded by the rebel, 20 Geo. 2. c. 26. 2 Geo. 2. c. 17. Treason. The same crimes treason as in England, 7 Ann. c. 21. Suspected persons in Scotland may be summoned to appear at Edinburgh, 1 Geo. 1. c. 20. f. 6. 19 Geo. 2. c. 28.

Qualifications of jurors, 19 Geo. 2. c. 9. f. 4. For trials of high treason, &c., committed in the Highlands, 21 Geo. 2. c. 19. f. 34.

Directions for proceedings to outlawry for high treason, 22 Geo. 2. c. 48.

Wine. Proportional duties in Scotland, 30 Geo. 2. c. 19. f. 15.

Woven manufactures. Manufactures of serge, pladges, fringes and flockings, regulated, 6 Geo. 1. c. 13. 10 Geo. 1. c. 18.

The excise on ale in several towns of Scotland, see the excise on wine, 1861.

On a day, See Fuller's earth.

Scripture. All profane fecular at the holy scripture, or expiring any part thereof to contempt or ridicule, is punishable by fine and imprisonmnent. 1 Hanc. P. C. 7.

Scriptures, Are mentioned in the statute against usury and excessive interest of money, 12 Hen. 7. cap. 6. If a private man hold a bond, he may receive the interest; and if he fail, the obliges shall bear the loss; and so is it he receive the principal, and deliver up the bond: for being intruded with the securiti itself, he shall be presumed he is trasted with power to receive the principal and interest; and the giving up the bond on payment of the money is a debtor therefrom: but if a freeman be intruded 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 relieve the estate, but there must be a reconveyance, &c., decreed in Chancery. Hill. 7. Hen. 7. 1 Salt. 157. It is held, where a freeman puts out his client's money on a bond, which, on inquiry might have been easily found to, yet he cannot be charged in equity to answer the money; for it is here said, no one would venture to put out money of another upon a securiti, if he were obliged to warrant and make it good, in case a loss should happen, without any fraud in him. Prec. Chanc. 146. 13 Geo. 3. 262. 292.

Seate, (Seateum, Sax. Sealdeng) 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, Vol. II. N°. 125.
Seamen. Mariners defecting the King's service, to be imprisoned, 2 R. 2. f. 1. c. 4.

The punishment of watermen withdrawing in times of peace, 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 Eliz. c. 5. f. 27.

Seamen and fishermen not compellable to serve as sailors, 5 Eliz. c. 5. f. 41.

The Trinity-houle at Deptford forbad to set up demoiselles, 8 Eliz. c. 13. f. 2.

For preying of mariners, 16 Car. 1. c. 5. f. 23. c. 36. Against disturbances by seamen, 16 Car. 2. c. 5. f. 16.

23 Car. 2. c. 11. f. 10.

Seamen declining to fight, to lose their wages and be imprisoned, 22 & 23 Car. 2. c. 11. f. 7.

Seamen hindering their captain 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. 37. as registrating seamen, 9 Ann. c. 21. f. 64.

Disabled to be admitted to Greenwich Hospital, 7 & 8 W. 3. c. 21. f. 2. & 3 Ann. c. 6. f. 19.

A duty of six-pence a month payable by seamen to Greenwich Hospital, 8 & 9 W. 3. c. 3. f. 6.

Penalty of receiving wages in fraud of a seaman or his representatives, 9 & 10 W. 3. c. 41. f. 3.

A will of a seaman on the same paper with a warrant of attorney, void, 9 & 10 W. 3. c. 21. f. 6.

Seamen defecting merchants' ships, to lose their wages, 11 & 12 W. 3. c. 7. f. 17.

Seamen not to be wilfully left beyond sea, 11 & 12 W. 3. c. 7. f. 18.

Parish boys may be bound or turned over to the seafarers, 2 & 3 Ann. c. 6.

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 precluded, 2 & 3 Ann. c. 6. f. 10.

Malters to have wages of apprentices prepaid, 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.

Apprentices not exempt from precluding 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 pests, 6 Ann. c. 31. f. 2.

Scamens in America exempted from the pests, 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. 5.

Seamen 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 merchandise, 8 Geo. 2. c. 24. f. 8.

Direction for the punctual payment of seamen wages, 1 Geo. 2. c. 2. f. 6.

Penalties for seamen serving under penal laws, 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.

Penalties on seamen in merchant service deferting or absenting, 2 Geo. 2. c. 35. f. 3. 5. 9. 10.

Penalties to be deduced 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.

Merchants 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.

Penalties on seamen in merchant service deferting or absenting, 2 Geo. 2. c. 35. f. 3. 5. 9. 10.

Penalties to be deducted from wages, 2 Geo. 2. c. 36. f. 9.

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One man's pay in 100 given to widows, 6 Geo. 2. c. 25. f. 18.

Merchants ships may be navigated by three fourths foreigners in war, 13 Geo. 2. c. 3. f. 1.
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Three fourths of the crew of merchants ships may be foreigners, 28 Geo. 2. c. 16. whom the fees for the time of their entering, 31 Geo. 2. c. 10.

Supernumeraries entitled to wages, 31 Geo. 2. c. 10. f. 2. of which it is not to be taken out of the forfeitures, except for cases of debts of 20l. 31 Geo. 2. c. 10. ft. 28.

Seamen not to be paid refunds of 1677. the profit of their being distasted by the lord's more than twice as one, in respect of the land of divers heirs descended unto him. Reg. Orig. fol. 177. a.

Secta non farinosis, Is a writ that lies for a woman, who, for her dower 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. 173, but fee 12 Geo. 2. c. 24.

Secondary, See Secondary.

Secondary supernumeratione paginarum, Is a writ that lies where admeasurement of payfure hath been made; and he that first purchased the common, doth again furnish it, notwithstanding the admeasurement. Reg. Orig. fol. 159. Old Nat. Brev. fol. 73.

Secondary testamenti quod non detestat ad partes efferas in litteris Regis, is a writ that lies for the King against his subject, to stay them from going out of his kingdom; the ground of which is, That every man is bound to serve and defend the commonwealth, as the King hath think met. F. N. B. f. 85.

Secondary parte, Is a writ that lies for one who is threatened death or danger, against him that threatens, and in the suit out of the Chancery, and directed to the sheriff; the form and farther ufe whereof you may fee in Reg. Orig. fol. 88, and Fizh. Nat. Brev. f. 79.

Secondary se defendendo, Is a plea for him that is charged with the death of another, saying, he was necessitated to do that which he did in his own defence. The other as affailing him, and that he had not done it if he had been in hazard of his own life: But this danger ought to be so great, that it seems inevitable. Sawndf. Pl. Cor. lib. 1. cap. 7. And though he justify 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 Homitlie, Murder; and 19 Vin. Abr. 304.

Secondary, See Conventicles. See Conventicles, His rep.

Sedcob, A basket, or other vessel of woof carried upon one arm of the husbandman to bear feed or grain, which he sows with the other hand. From Sax. Sed, feed, and codde, a purfe or fuch like continent. Hence Cold in Wilferton, a bolifter or pillow, and in other northern parts a cushion, as pin-cod, i.e. pin-cushion. A horfe-cod, i.e. a horfe-codder to guard his neck.


Sedcul. See Dil.

Sedigintage, (Dominus) Is borrowed of the French figneur, and denotes in the general dignity as much as lord; but particularly it is used for the lord of the fee, or for a man, even as dominus or feignor among the seigniories, is he who grants a fee or benefit, out of the land to another: And the reason is, as Histman faith, because having granted the use and profit of the land to another; yet the property, that is dominium, he still retains in himself. See Histman in verbis feudal, verb. dominus & feignor.

Sedigintage, (mentioned in flat. q H. 5. flat. 2. cap. 1.) Seems to be a royalty or prerogative of the King, whereby he challenge allowance of gold and silver brought in the market to his Exchange for coin. By fignorage or coinage of every pound weight of gold, the King had for his coin five fhillings, out of which he paid the matter for his work, sometimes one fhillings, sometimes eighteen pence. Upon every pound weight of silver, the fignorage or coinage answere to the King in the time of King Edward 3. was eighteen penny-weight ponders, which about the time amounted one fhillings, and by which he paid sometimes eighteen pence, sometimes nine pence to the matter. In the time of H. 5. the King's fignorage of every pound weight of silver
Scitum, (Scitum, from the French Scitum) Poffession.
So Primitiv Scitum is the first possession, and to seize, is to take possession. See Primitiv. Of the French word fois is made the Latin siferus, used both by the Com~and, and Civil, see Seignior. Seignior, according to the Common law, is twofold; Scitum in Fact, and Scitum in Law. Perkin's Dower 260, 270. Scitum in Fact is, when a corporal possession is taken; Scitum in Law, when something is done, which the law accounted a seisin, as an inionment; and this Seisium is in law as much as a right to lands and tenements, though the owner be by wrong driven in his Perkin's Seisin. by the facts 257. 458. And it is by欺mon. That he who hath an"s posseion quietly taken, hath Seisin de droit et de clame, whereof no man may diffuse him by his own force or subtilty, but must be driven to his action, Fel. Briefe of Novell Difference. Coke, lib. 4, fol. 9, calls it Seisin. Of fol. or actual seisin. The Geneion is, in the one Giesiem possefionis, the other, Natureum. Cowell, edit. 1727. See 19 th. in Abr. 306—320.

Seidina habend. quia hic habuit annuunt item a vaudium, is a writ that lies for delivery of Seisium to the lord of his lands or tenements, after the King, in the right of his prerogative, had had the year, day and waile. R. 7. 1727. fol. 165.

Seizure of goods for offences. No goods of a felon or other offender can be seized to the use of the King, before forfeiture; and there are two seizes, one verbal only, to make an inventory, and charge the town or place, when the owner is indited of the offence; and the other actual, which is the taking of them away afterwards on conviction. Con. 3. 1st. 103. See 19 th. in Abr. 321—374.

Seibetta (from the Sax. Seiba, a Seat, or Stool) Is used for a shop, shed, or stall in a market. Affis. 9 R. 1. It is also made to signify a wood of fallows or willows. And See Edward Coke takes Seibetta for a full-pit. Co. Law, 213. 1st. 103.

Self-lace. (Sax. Self-lace) Is where a man murders himself, called felse de jure.

Self-preservation. Every creature has implanted in it by nature a strong desire of self-preservation; and by our ancient law, if a man stole without merely to satisfy his present life, being for the preservation of life, it was not felony; but this law is become obsolete. Staunf. P. C. See Se self-defence.

Selin of Land. (Selio terra) May be derived from the French Selioon, ground rising between two furrows, in Latin Percr, in English a ridge of land, and contains no certain quantity, but sometimes more, and sometimes less. Theobald, 6th. in his Jurisdiction of Courts, fol. 211, faith, That a Selion of Land cannot be demanded, because it is a thing uncertain. It may not without some probability be deduced from the Saxon Sel or Syl, i. artem; whence allo the French Selioner, id et, eurar, to plough. Claris eto Alarchan makes ex Selions and a plough be et one acre. Cowell, edit. 1727. See Kennedy's Glossary.

Senn, (Samma) A horse-load; a Senn of corn is eight bushels. Cowell, edit. 1727.

Semainaries, Pertons are not to go or be lent to Popish seminaries to be instructed or educated, under divers penalties and forfeitures, by the 1. 1727. c. 4, and contributing to the maintenance of a Popish seminary is made a praemunire. Stat. 27 Eliz. c. 2. See Papit.
Sequestr sub two pericula. Is a writ that lies where a summons of warrantisfandum is awarded, and the sheriff returns, that he hath nothing whereby he may be summoned; then goes out an nians and pluries, and if he come not at the pluries, then goes out this writ. 


Sequestrum, or the seizing of a thing, and depending issue of a cause or trial. Cowell, edit. 1727.

Sequestrum curiae, Suit of court.—Et quod non liberis a Sequela curiae. 

Min. Ang. 2 par. fol. 253.

Sequestrum molidenii, The owning suit to a particular mill, or being bound to grind corn in that only place, where the defendant is irrefistible, and therefore this

Cumberland sequela molidenii, was to grant all the toll and profit arising from such customary right. Cowell, edit. 1727.

Sequestrum villanum, All the reitue and appurtenances to the goods and chattels of fertile tenants, which were the arbitrary and absolute disposifion of the lord. 

Cowell, edit. 1727.

Sequestration, Is a term used in the Civil law for re-nouncing; as when a widow comes into court, and disclaims to have anything to do, or to intermeddle with her husband’s estate which is decea.ed, she is said to sequestrate.

Cowell, edit. 1727.

Sequestration, (Sequestratio) 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 necessary; voluntary is that which is done by consent of each party; necessary is that which the judge doth of his author, when he saith that the parties will not or. It is said for the act of the ordinary, disposing the goods and chattels of one decea.ed, whose estate no man will meddle with. 

Dyer, fol. 234. num. 5. & fol. 260. num. 42. & fol. 271. num. 26. As also for the gathering the fruits of a benefice void, to the use of the next incumbent. 

2 H. 8. c. 11. Festejus, c. 50. and in divers other cases. See Lendel’s Glossary in sequestrate.

Sequestration in the court of Chancery is a comission usually directed to 7 per?ons therein named, and empowering them to seize the defendant’s real and personal estate into their hands, (or it may be some particular part or parcel of his lands) and to receive and sequestrate the rents and profits thereof, until the defendant shall have answered the plaintiff’s bill, or performed some other matter which has been ordered and enjoined him by the court, for not doing whereof he is in contempt. 

Curt. Can. 89.

A sequestration out of Chancery is grounded on the return of the sequestration at arms, wherein it is certified that the defendant is deferted and destitute; and therefore this process falls, and gives authority and power to the sequestrators (who are per?ons of the plaintiff’s own naming) to enter upon and seize his, the defendant’s real and personal estate. 

It appears that there were great struggles between the Common law courts and courts of Equity, before this process came to be eftabltshed; the former holding that a court of confience could only give remedy in perpetuum, and not in rem; that sequestrators were trespafizers, against whom an action lay; and in the cafe of Colfen v. Gardenor, the Chancellor cites a cafe, where they ruled, that it was not an execution to seize the defendant’s effects, until he committed this process; it was no murder. 

Cfr. Eff. 651. Brieger v. Watts. 1 Med. 259. But 2 Med. 258. that the Chancellor having iffued such sequestration, it will be as binding as any other process according to the rules of the Common law. 

2 Chanc. Ca. 44.

But these were bloody and desperate revolutions, and so much against common justice and honesty, which requires that the decrees of this court, which preferred men from deceit, should not be rendered illusory, that they could not long stand; but this process got the better of these revolutions on this ground;viz., that the extractions which might punish the party by the loss of estate as well as the imprisonment of the person, because that liberty being a greater benefit than property, if they had a power to commit the person, they might take from him his estate till he had answered his contempt. 

2dly, To say that a court should have power to decree about things, and yet should have no jurisdiction in rem, is a perfect soleumn in the confitution of the court itself.

2 Peer Will. 621. 2 Ch. Ca. 44.

It has been said, that the fi?r influence of a sequestration, after a decree, was Sir Thomas Read’s cafe in Lord Grenville’s time; and that it was afterwards awarded in Chancery, in the cafe of Hyde v. Pitt, 866, and affirmed in parliament; and by order of the House, Dr. Cotter v. Fountaine, 1687, and since, without scruple. The doubt formerly was, that lands were not liable to execution before the statute Wt2m. 2. par. 18. 1 Ch. Ca. 52. 

2 Ch. Ca. 44.

In Vernon’s Reports it is said, that sequestrations were first iffued in Lord Bacon’s time, and that they feuaringly were used in process, and after a decree to fequestrate the thing in demand only. 2 Vern. 423.

1. In wbat causes a Sequestration is to be awarded.
2. The power and duty of the Sequestrator; and when a Sequestration is determined.

1. In what causes a Sequestration is to be awarded.

A Sequestration nifi is the first process against a peer or member of the house of commons. 

2 Peer Will. 385.

1 Ch. Ca. 44.

A sequestration is also the first process against the personal servant of a peer, within the words and meaning of the statute 14 Eliz. 3. for that otherwise such servant would have greater privilege than his Lord. 

1 Peer Will. 535.

If there be a sequestration nifi against a peer for want of an answer, and the peer puts in an answer, that is insufficient; yet the order for a sequestration shall not be absolute, but a new sequestration nifi. 

2 Peer Will. 385.

Notwithstanding the superintendence power of the courts in this kingdom over those in Ireland, and what is said in some of our books, it seems to be now the better opinion, that the court of Chancery here cannot award a sequestration against lands in Ireland. 1 Vern. 76. 2 Ch. Ca. 189. 2 Peer Will. 261.

It was said, that such processes had been awarded to the governor of North Carolina; but herein it was doubted whether such a sequestration should not be directed by the King’s council, where alone an appeal lies from the decrees in the plantations. 

3 Peer Will. 261.

Copholdy may be sequestrated, though not extendible at Common law or the statute of Wt2m. 2. for courts of equity have potestatem extraordinari et abolutam; but it seems a doubt whether such a sequestration can be removed against the heir of a copholder, which arises from the difficulty of obliging the Lord to admit, and depriving the Lord of his fine, &c. upon the death of his tenant. 

2 Ch. Ca. 46. Vide 1 Bernard. 431.

A sequestration out of Chancery is more efficacious than an execution by fieri facias at law; for a sequestration may be against the goods, though the party is in custody upon the attachment; whereas in law, if a capias ad satisfiendum is executed, there can no fin. be. Cajus in Lord’s Tailor’s Time 222.

Where the sequestrators seize the real estate of the party, any tenant or other person who claims title to the estate of the party, may be sequestrated, either by mortgage, judgement, lease or otherwise; who have a title paramount to the sequestration, shall not be obliged to bring a bill to contest such title, but he shall be let in to contest such a title in a summary way.

He may move by his counsel as of course to be examined pro interrofus; and in this case the plaintiff is to exhibit interrofatory in order, if it be necessary, for the discovery of his title to the estate, and he must be examined upon such interrogatories accordingly; and the master must flate the matter to the court, and the parties may enter into proof touching the title to the estate in question; and when the master hath stated the whole matter, the court shall then open the same upon the report; and if it appears that the party who is examined pro interrofus hath a plain title to the estate, and is not affected with the sequestration, then it is to be discharged as against him, with or without costs, as the court
The feuquier binds the time of awarding the commision, and not only from the time of executing it and its being laid on by the commissioners; for if it should be admitted, then the inferior officer would have ligandi & men ligandi potestate. 1 Vern. 58.

2. The power and duty of the feuquiers; and when a feuquiation is determined.

The feuquiers are officers of the court, and as such are demesnable to the court, and are to act from time to time in the discharge of their office. 1 Vern. 61. And this is done by them direct; they are to account for what comes to their hands, and are 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 usally paid to the plaintiff, but is to remain in court till the defendant has appeard or answered and cleared his contest, and then whatsoever hath been seised 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 cafe.

The plaintiff's counsel may move and obtain an order for his tenants to arrest and pay their rents to the feuquiers, or for the feuquiers to fell and dispofe of the goods of the party, and to keep the money in their hands, or to bring it into court, as shall be most adicable and diereretionary, and fitting for the court to do.

Sequequators or mefe procres are accountable for all the profits, and can retain only so far as to satisfy for com- tent. 1 Fer. 248.

If feuquiers, having power to fell timber, dispofe of 7000l. worth, and only bring 2000l. to account, they, as officers and agents of the court, are not responsible, and not the plaintiff. 1 Vern. 61.

A feuquiation of a levari at Common law, and the party feuquiatoring has neither jus in re, sell vere, the legal eflate of the premises remaining in every respect as before. 1 Peer Will. 307.

Sequequators being in possesion of a great house in St. James's square, which was the defendant's for life, the court ordered that the matter allow a tenant for the house, and the feuquiers to make a lease, and the tenant to enjoy. 3 Ch. Rep. 57.

It was moved, that the irregularity of a feuquiation might be referred to the deputy, which was taken out against the defendant for not appearing, by reason of its being taken out sooner than by the court's order, and by the feuquiators being sent before their effect on 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 feuquiators could do that, because a feuquiation upon mefe procres answers to a dirfignar 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 authorize feuquiators 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, feuquiators cannot sell but to the use 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 feuquiation as to the point of time to the deputy. 1 Barnard. Rep. 212, in Socet.

Lands were decreed to be liable to 500l. per annum, for the life of A, and a feuquiation and injunction for posses¬sion to that purpuse; the defendant against the injunction enters upon the lands, and receives the profits to the value of 190l. and thereupon was decreed to pay it; and after the death of A, it was decreed that the feuquiation should continue against the defendant for the payment of that money, and not to the defendant moved to have liberty to fell timber and raise money for his subsis¬tence alleging that the feuquiators had only the posses¬sion and the perception of the annual profits by the curate of the court, and therefore it could be no prejudice to have this granted: But Sir H. Grimfley, master of the Rolls, refided; for in this case the decrees which were last enforced, and the feuquiator's exercis of the payment of the money, shall not be observed as any favours from the court, and the defendant by lands in contempt,illy, If he will with the face of this timber pay the plaintiff his debt, and to discharge the feuquiation, there might be some reason for it; but for him to raise monies to other purposes, he shall not be favoured; and unless the plaintiff will confer, he shall not have liberty to sell. 4 Feb. 16 & 17. C. 87.

A feuquiation that ifuses as a mefe procres of the court will be discontinued and determined by the death of the party; but where a feuquiation ifuses in pursuance of a decree, and to compel the execution of it, there though the fame be for a personal duty, it shall not be determined by the death of the party. 1 Vern. 58.

A feuquiation against the father, who appeared to be only a tenant for life, and on his death the feuquiation was discharged. 1 Ch. Ca. 241. 2 Ch. Ca. 46.

The bill was to revive a feuquiation obtained against the defendant's husband for a personal duty before his inter¬course. The defendant, and the fequestrators, and the de¬fendant's estate in dower in the lands that were feuquiel¬ered before the marriage, it being insuficient that those lands were bound by the feuquiation, and covered therewith, that the defendant's right of dower could not attach them; but on a demurrer to this bill, the demurrer was allowed; and it was ruled, that such a feuquiation should not bind the dower which came in for her jointure or dower; but whether the heir in fee simple should in such cafe have the estate bounded, and subject to such a feuquiation, or not, was doubted; and the case not being before my lord keeper, he refused giving any opinion therein. 1 Vern. 118.

It was in point before came the fame lord keeper in another case, when his lordship inclined to think that a feuquiation for a personal duty determined with the death of the party, and could not be revived against the heir; but his lordship took time to consider of it, and would be attended with precedents. 1 Vern. 166.

It seems to be now settled, that a feuquiation is a personal proces, which abates by the death of the party; so that such feuquiation being grounded on a decree for debt or personal duty, cannot be revived against the heir of the defendant; otherwise in those cafes in which the heir is bound. 2 Peer Will. 621.  See 15 Fin. Abr. tit. Sequestration.
them that degree by a day certain therein assigned. Dyre, fol. 72. num. 1. See Count. And of thefe is the King's serjeant, being chosen commonly out of the reft, in refpect of his great learning, to plead for him in all caufes, either of the Church or State; and is one of the Serjeants at Law. 

And of thefe may be more if it please the King. This in other kingsdoms is called Advocatus Regi. Caifan. de rei. Bundan. pag. 830. With what folemnty these serjeants are created, read Forfjuice, cap. 50. Cr. 3. par. fol. 1. and a fyll. fol. 213. There are 12 Serjeants at Law at Westminster. In Edward the Sixth's time, ferjeant Benet wrote himfelf fatis ferjeant ad legem. If we fome time there was none but himself. Mr. Selden tells us they were formerly called dolores lege, though others are of opinion that the judges are more properly doctores lege, and the ferjeants or Serjeants of the Peace, more properly to be called Serjeants of the Peace; for although a ferjeant may be richer than all the doctors in the common, yet a doctor is superior in degree to a ferjeant; for the very name of a doctor is magiftral, but that of a ferjeant is miniftral; for he is ferjeant ad legem, and the doctors are feated and covered when they plead, but the ferjeants flall fland uncovered at the bar, only they have a clof on their heads, which is fignum fatus & gradus. This word ferjeant is ufed in Brittan for an officer belonging to the county, and the fame whom Bract. in his fifth book, c. 4. num. 6. calls ferjeantem banfandi, and is in truth no other than the bailiff of the county, and in a manner the officer of a county in the Middle Ages. See Manerii. 

Coke, vol. 4. Copyhold cafs, fol. 21. e. The next is a ferjeant at arms, or the mare, (ferjeanti ad arma) which office is to attend the perfon of the King. Stat. 7 H. 7. cap. 3. to arrife traiors or perfon's of condition, and to attend the lord higheward of England, fitting in judgment upon any traifter, and fuch. Pr. Cap. c. 7. cap. 1. Of them, by her turn H. 2. cap. 2. e. there may not be above thirty in the realm, two of them, by the King's allowance, do attend on the houses of Parliament, whole office in the houfe of Commons is, the keeping of the doors, and (as of late it hath been used) the execution of fuch commands, efpecially touching the apprehenfion of any offender, as that house enforce. H. C. N. 41. fol. 9. Another of them attends on the Lord Chancellor or Lord Keeper, in the Chamber, and one on the Lord Treasurer of England: One upon the Lord Mayor of London, upon extraordinary folemmities; one attendeth upon the Lord President of Wales, and another upon the Lord President of the North, G. Cough, edit. 1727.

These ferjeants at arms are in the old books called virgates, because they carried filver rods with gold before the King. In cadem curia Regis font virgatae populam gravantes, gravia fede potenter. Flota, lib. 2. cap. 13. Lib. N. 2. vol. 1. Abr. 334.

Another fort of ferjeants are chief officers who execute civil functions or offices within the King's houfhold; of which you may read many in the Statute of 33 H. 8. c. 12.

There is likewife a more inferior kind of ferjeants of the peace, whereby there are many in the city of London, and other corporate towns, that attend the mayor or other head officer, chiefly for matters of justice, Kitchin, cap. 143. And there are called ferjeants of adlaw. New Book of Entries, vol. 2. Sire fúatia in Mainperroni, cap. 3. fol. 538. There was alfo a kind of ferjeants in religious houses, called ferjeants; and a monarch is called the Serjeant in fome fcripts. In fyre had certain officers attending them, called ferjeants, (as appears by Wifley. cap. 1. cap. 30.) which sles calls virgatas ferjeantis, and were in the nature of our tip flaffs.

Serjeants, (Serjeantsia,) Signifies in law a service that can only be done by a fpecific officer, and not by a number of inferior officers. For a man may hold the land of the King by service, which he ought to do in his own perfon; as to bear the King's banner, spee, &c. Petit ferjeant is where a man holds land of the King, to yield yearly fome fmall thing towards his wages; as a fword, dagger, bow, &c. of which read Brand, lib. 2, cap. 18. & 37. Briton, cap. 65. num. 1. 2. Inter Jededia ferjeantia jannum. If tiljififfrifnum, quod nec paroterdon aliquam annuatn praecepit Regem, says the learned Spelman; and Conden. et. Suffill. speaks of Balduin Le Petitour qui tenet terras in Hennepo, praecepit pro quo aut alibus fuites die nationali domini fingulis attinet. See Regii Anglie Saltum, Sulfum & Petum, alias unam saltum, unam fuffusum, & unam bombardum. And Sir Richard Aldby held land at Kent by ferjeantia, to be serjeantia Regi, the King's fore-footman, when he went into Gafcoigne. Dole peruenit eft parti failumam proprium 4d. until he had worn out two Butts of threepence price. This service being to be performed when the King went into Gafcoigne, to make war, is knight's service. Co. on Lit. fol. 639. See the Statute 12 Car. 2. cap. 24, whereby all tenures, are turned into hereditary right; but the monarch's services of grand ferjeanty are therein excepted. 

Serjeanty, which the King tenant unam virgation terra, per ferjeantiam muniantur. See Serjeantia, & opera Domini Regis, ad cauffam Domini Regis, Lib. niger Herefordian. Though feveral offices are now turned into fœtitute, yet it may be neceffary to us to describe in our old law-books, which fee under the word ferjeant. See Sene de warbor. finif. and Kempl's Glossary.

Serjeants, Their vifuals and apparel regulated, 37 Ed. 3. c. 8. Servants that riotously take their masters goods to furrender upon proclamation, and they may be committed till they pay over to the executors, 33 Hen. 6. c. 1. For other matters, fee Attorneys, Felons, Fine, Labourers, Manufacturers.

Servii, Bond-men, or fervile tenants. Our northern fStates had alwavs a much effier condition than the Roman fStates. Servii non in opificio marcm defribenti per familiari minifririonet suum. Quamque fedom, jussi, pe- nates regis. Prunatini modum adhibit non penates, aut viri, colonio iugis, & servus habentas partem de Meribus Germanorum. Which plainly defines the condition of our Saxons and Norman fersants, natives and villains, whole fervitude did more refpect their tenure, than their perfon. No author has fixed the diftribution between fersans and villaimus, though undoubtedly their fervice state was different, for they all along in the Domefsay-book diftinguished from each other. So in Barchefter there were—Quingue servi, & viginti adts villani, &c. I fuppose the ferses were thofe, whom our lawyers have since called pure villaines, and villaines in their own, and without any determined tenure of land, were at the arbitrarv pleasure of the lord appoiined to fuch fervice works, and received their wages or maintenance at the fervice of the lord. The other were of a fuperior degree, and were called villani, because they were villani & glebus adthropi, i.e. held fome cattle and lands, for which they were burdened with fuch fixed fervice as was, and wore lands for the fervice of the manor or eflate to which they belonged. See Kempl's Glossary. The name and quality of their bond- age do often occur in Domefsay-regifter: And their condition, no doubt, was worse than that of the bondmen or cofiers, who performed likewife some fervice offices for their lord, and yet as to their perfons and goods were not obnoxious to fervice, as the proper fers was. They were
were of four boats, 1. Such as fold themselves for a live-
lihood. Debtors that were to be sold, for being inca-
pable to pay their debts. 3. Captives in war, retained
and employed as performing. 4. Nation, such as were
both freemen and by such decent belonged to the sole
property of the Lord. All these had their persons, their
children, and their goods, at the disposital of their Lord,
incapable of making any wills, or giving away any mat-
ter. Cowell, edd. 1727.

Sertuis, (Latin) is that service which the ten-
tants have to pay the tithe of his fee, owed unto his
lord. How-
man thus defines it: Sertuis e1 manu ssequit diente-
laris, de verba feudal. It is sometime called Service, as
R. 2. cap. 6. Our ancient law books make many divi-
sions of it, as Brad ton, lib. 2. cap. 16. and Britton,
cap. 66. Or personal and real: also into military and bafe;
and Brad ton, ch. infra, num. 7, into intrinse and extrin-
sic. Sertuis intrinse is due to the capital Lord of
the manor. Forintem is that which is due to the King,
and not to the capital Lord. Service is also divided into
frant and bafe, the one termed liberum servitium, the
other villanagium. It is also divided into continual or
annual, and casual or accidental: the former is the fein
of tent, the other, seisin of relief. Ct. 4 Rep. fol. 9.
Bradton's see. Compare. See Sargose. Thomas Lea-
gh, esq: at the coronation of King Charles the second,
brought up to the King's table a mof of pottace, called
dilligrat, which servire had been adjudged by the court
ante post, in right of the maro of Addington in
Sorby, whereupon the Lord High Chancellor prefered
him to the King, who accepted the service, and after-
wards knighted him. Cowell, edd. 1727.

Service and sacraments. The penalty of depraving
the sacrament of the altar, 1 Ed. 6. c. 1.
The briefed sacrament 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.
S. 3.
For the uniformity of the service and administration of
the sacraments, 2 & 3 Ed. 6. c. 1. 5 & 6 Ed. 6. c. 1.
1 El. c. 1. 6 El. c. 1. f. 3. 13 & 14 Car. 2. c. 4.
Penalty of reviling the prayer-book, &c. 2 & 3 Ed. 6.
c. 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 universi-
ties, 2 & 3 Ed. 6. c. 1. f. 6. 13 & 14 Car. 2. c. 4.
S. 7.
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 refot to their parish churches, 5 & 6
Ed. 6. c. 1.
Penalty to be present at other worship, 5 & 6 Ed. 6.
c. 1. f. 6.
Such service shall be used as in the last year of King
Henry 8. 1 Mar. fl. 2. c. 3.
The penalty of disturbing a preacher or priest laying
divine service, or pulling down an altar, &c. 1 Mar. fl.
c. 2.
A remonstrance on the parish, if offenders escape, 1 Mar.
fl. 2. c. 3. f. 8.
The penalty of not repairing to church on Sundays
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 translated into the
the Hebrew tongue, 5 El. c. 28.
Penalty on persons maintaining doctrine contrary to the
articles, 13 El. c. 12. f. 2.
All ecclesiastical persons to read and ftolebe to the il-
book of common prayer, &c. 13 & 14 Car. 2. c. 4.
15 Car. 2. c. 6.
All persons in office to take the sacrament and the de-
claration against transubstantiation, 25 Car. 2. c. 7.
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 sacrament, 16 Geo. 2.
c. 32. f. 3.

Allowance of impediments by the ordinary, for not read-
ing the service, extended to the certificate of subscrip-
tion, 23 Geo. 2. c. 28. 2.

Service pecuniar, to indemnify against neglect in point of
time, 23 Geo. 2. c. 28. f. 2.

Service peculiar, (mentioned in Stat. 1 Ed. 4. cap. 1.)
is worldly service, contrary to spiritual and ecclesiastical.

Sectentius, Are certain writs touching servants and their
masters, violating the statutes made against their
commonwealth, which see in Reg. Orig. f. 189, 190, 191.

Sertuis feuclade a parviscule, was not a personal
service, but only by reason of the lands which were held
in fee. Bradton, lib. 2. cap. 16. par. 7.

Sertuis juxta inferior, was a service which did not
belong to the chief Lord, but to the King. It was cal-
led Sertuis extrinse, because it was done Forti,
vel extra Sertuis good fit domini capitale. We read fe-
veral grants in the Monast. 2 tom. p. 48. of all li-
ibersies, with the appurtenances, julus juxta Servitio.

Sertuis intrinse, 1. that service which was
due to the chief Lord, done from his vassals. Bradton,
lib. 2. cap. 16. fol. 3. c. 14. par. 7.

Sertuis libera, Was a service to be done by the
feudo ac servus, who were called liber servos, and
distinct from subjunct; as likewise was their service, for
they were not bound to any of those base services, as to plough
the land and, &c. but only to find a man and hire
b° go with the Lord into the war, or to attend his court,
the word marum, as in an old rental of the manor of South Allin
in Suffolk, mentioned by Sumner in his treatise of Gewel-
kind, fol. 56.

Sertuis regulae, Royal service, or the rights and prorogatives
that within such a manor belong to the King,
if Lord of it, which were generally reckoned to be these:
2. Power of life and death in felonies and murders.
3. A right to waifs and strays.
6. A licence of bread, beer, weights and measures.
All these entire privileges were annexed to some manors
in their grant from the King, and were sometimes con-
verted in the charters of donation to religious houses.
Parch. Antiq. 60.

Sertuis testamentale, Were those whom we now call
coventant servants. They are mentioned in the laws of
King Athelstan, c. 34.

Sertuis aquae, 1. Is a writ judicial that lies for
ordinary real service, to A. who owes and performs to
B. for the acquittal of such services. Reg. of Writs
Judic. fol. 27. a. & 36. b. 6.

Serturis of bills, Are such servants or messengers of
the marus belonging to the King's service, as were sent
aford with bills or writs to summon men to that court;
they are now more ordinarily called tiples.

Sertuv, (mentioned in Stat. 25 Ed. 3. c. 6.) Seems
likely to signify the affelling or rating of wages.

Sertuis of parliament. The paying any bills, by giv-
ing the Royal oath thereto, doth not make a servis: but
the seison of parliament continues till it be prorogued or
dissolved. See a part, Jud. fol. 27. and Sertuis of parlia-
ment is the fitting of the parliament. See 19 Fin. Ant. 337, 338.

Sertuis of the peace, A court of record, held be-
fore two or more justices of peace, (quorum consensu) for
the execution of the authority given them by their
commission, and certain cares of parliament. And the jus-
ces in that court, have power to hear and determine libera-
tes against the publick peace, &c. and many other matters of
law. This court is held four times in a year in some place
within the county, &c. also besides the general sel-
sions of the peace, there are private seions held by the
justices, for divers particular branches of the business of
358.

Sertuis for abriding servants, Called statute se-
mes, and could consist of hundreds, &c. E. I. 25. See
Sertuis feudum.

Sertuis for weights and measures. In London, four
servants, six men among the mayor, recorder, and alder-
nors. 2
Sew

of which the mayor or recorder to be one) may hold a
enions to enquire of offenders by false weights
mary, contrary to the statutes; and to receive
dings, punish the offenders, &c. Cluster King

Settlement of the Poor. See Apprentice, Bastard,
Poor, Barr's justices, tit. Poor, and 19 Vins. Ab.,
tit. Settlement of the Poor.

Severn-side. Wool-ley how held in trustees for
the lands of this county to an annual charge, the free-
school in Severn-side. 8 Ga. c. 1. 31.

Several action. Is where two or more persons are
severally charged in any action.

Several covenant. A covenant by two or more fe-
ervally: and in a deed where the covenants are sever-
several persons performs, they are as several deeds, written
in one piece of parchment. 5 Rep. 23.

Several inheritance. An inheritance conveyed, f. 685
to defend, or come to two persons severally by moieties. &c. See Inheritance.

Several tail. (Tullud separatum) is that whereby
land is given and settled fenally to two. For example,
Laws give to two men, the express or definite, to the best
of their bodies begotten, the dotes; joint estates for their
two lives, and yet they have several inheritances,
because the issue of the one shall have his moiety,
and the issue of the other, the other moiety. Cowell.

Several tenancy. (Tenura separata) is a plan or ex-
ception made in a writ that is joint, or several, or as joint,
as these are. Braks. &c. Several Tenancy, fol. 273.

Severance. I. the slinging or severing of two, or
more, that are joined in one writ. For example, If two
join in a writ de libertate prebenda, and the one afterwards
be nonmot, here severance is permitted; so that with-
standing the coronet of the one, the other may severely
proceed. P. N. B. fol. 78, and Bras. tit. Severance
and Severum, fol. 238. There is also Severance of the tenants
in an affize, as when one or two, or more differents,
appear upon the writ, and not the other. New Book of
Entries, fol. 81, and Severance in attains, ibid. fol. 93,
and Severance in deeds, where two or more executors
are named plaintiffs, and the one refuses to prosecute. ibid.
fol. 220. Severance of corn is the cutting and carrying it
eff from the ground, and sometimes the setting out the
tithe from the rest of the corn: called Severance. See
Coun. Rep. 2 par. fol. 215. There is also Severance in grants,

Severum. See Fifth, Hovels.

Severum. (Seward and Seward, et filio in huius jure,
duo dux ad oppidum, &c.) A pannage or gutter to
carry water into the fea, or a river. 6 H. 6. cap. 5.
and 22 C. 2. c. 12. And commissioners of severs are such
as, by authority under the Great Seal, see drains and
ditches well kept and maintained in marshy and sunny
countries, for the better conveyance of the water into the
sea, and preserving grass upon the land for the feed-
ing of cattle. See the statute 15 Car. 2. cap. 17, and
17 Car. 2. cap. 21. This was the great of the severum in
the sense called Bedford Level, and the authority of the
master, bailiff, &c. as Commissioners of Severes. Cowell.
ed. 1727.

Commissions of severes shall be awarded by the Chan-
cellors, 6 H. 6. c. 5. 18 H. 6. c. 10. 23 H. 6. c. 8.
11 Ed. 4. c. 6. 4 H. 7. c. 1. 6 H. 6. c. 10. 12
Car. 2. c. 15.

Power given to the commissioners to execute their or-
dinances, 8 H. 6. c. 3.

The authority, &c. of commissioners of severes, 23
H. 8. c. 5.

The commissioners shall be resident in the county, 25
H. 8. c. 5.

The power of taxing the King's lands, 3 Ed. 4. Ed. 6.
c. 8.

The commissioners in Chancery may have power to
prevent damage by land arising from the sea, 1 Mar. fl.
3 c. 11.

Directions for the commissions of severes, and the ex-
ecution of them, 13 Ed. c. 9. 6.

Vol. II. No. 125.
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It is said by Lord Coke and Dalton, that Earl, by reason of their high employments and attendance upon the King, being not able to follow all the business of the county, were delivered of all that burdens, and only enjoyed the honour as they now do, and that labour was laid upon the sheriff, to do that now the sheriff doth all the King, that he is bound to, and the sheriff, though he be still called vicissimo, yet all he doth, and all his authority, is immediately from and under the King, and not from or under the Earl; so that at this day the sheriff hath all the authority for the administration and execution of justice, which the Count or Earl had; by the King's last act, no coming to the Sheriff General Com. 9 Co. 49. Dalh. Sher. 2.

He is therefore at this day considered as an officer of great antiquity, truth and authority, having, as Mr. Dalton observes, from the King the custody, keeping, command and government (in some forts) of the whole county committed to his charge and care; and, according to my Lord Coke, he is said to have triciilem et jurisdiction, viz. Vico jurisdiction, viro legi et viro repudiation, etc. Vico jurisdiction to serve processes, and to return indifferent jurors for the trial of mens lives, liberties, lands and goods; viro legi to execute processes and make execution, which is the life of the law, and vice jurisdiction to keep the peace. Co. Lit. 168. Dal. Sh. 5.

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 the offices did not determine by the death of the King.

2 Ed. 55. 2 Blackf. 259. but quere.

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 appoint or divide it, that is, he cannot determine it in part as for one term of one hundred; neither can he abridge the sheriff of any thing incident to or belonging to his office. Dau. 60. 4 Co. 35. Mil- ton's cafe, Dalh. Sh. 6. Hob. 13. Ryn. 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 dispose of his officers; 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 court, that any person shall complain against them; and that none that is swerward or bailiff to a great lord shall be made sheriff. 9 Ed. 2. 2 Ed. 3. 4. 4 Ed. 3. 6. 9 Ed. 3. 4. 4 Ed. 3. 4. 5 Ed. 3. 4.

It is held in the King that an interest in every subject, and a right to his service, and that no man can be exempt from the office of sheriff but by act of parliament or letters patent. Sav. 43. 9 Co. 46.

And on this foundation it was adjudged in Sir John Read's cafe, who was made high sheriff of Hertfordshire, at the time he was excommunicated for non-payment of alimony, that an information properly lay a against his being 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 sheriffs, which he was disabled to take by reason of the excommunication; but the court held that he was punishable for not removing the disability, in his power to get himself admitted from the re-commu-

1. and that therefore it could be no excuse. 2 Mad. 209. Attorney general v. Sir John Read.

And though in the above case it was admitted, that the subject was bound to serve the King in such capacity as he is in at the time of the service commanded, yet it was inflected upon, that he was not obliged to qualify himself to serve in every capacity; and that therefore a sheriff for debt is not bound nor competent to serve, no more than a person is bound to purchase lands to qualify himself to be either a coroner or justice of the peace; and it was likewise said, that by the statute 3 far. 1. Every recusant is disabled; he may confine, but he is not bound to it; for if he submits to the penalty, it is as much an act of law. 2 Mad. 201.

An information was exhibited against L. for refusing to take upon him the office of sheriff of Northwicvh, which pleased the statute 13 Car. 2. by which it is enabled, That a person elected to any office in a corporation, shall be such as within one year before hath taken the facrament according to the church of England, or else the election shall be void; and averred, that he had not taken the facrament, &c. at any time within one year next before the election of him to be sheriff, &c. wherefore the election was void. The attorney general replied, and set forth that part of the act of uniformity, by which every person is obliged to take the facrament three times a year, and all the liturgy of the church of England was not rejected, and set forth the statute 1 H. & M. for tolerating dissenters; and on demurrer it was adjudged, that the defendant's resigner was a departure from his plea, and therefore could have no advantage of the act of toleration, supposing it was for his purpose, it being a private statute, and therefore to be pleaded; and the judge mente was given principally on this point, yet all the judges except Judge Sam. Eyre, held, that this cafe was not within the meaning of the toleration act, which was not made in favour of dissenters, but the contrary, and was rather to exclude them from beneficent offices, than to cease them of offices of charge. 2 Carth. 305. 1 Carth. 116. 25. It was not adjudged good. 2 Selw. Carth. 495. 4 Mad. 438. City of London v. Voneare.

2. Manner of appointing him, and of his oath.

The high sheriff hath his authority given him by two persons; by the one the King commits him electively to perform the act; by the other the King commands all other his subjects within that county to be aiding and assisting to him in all things belonging to his office. Dalh. Sh. 7. where see the form of such patents.

By the statute 3 Ed. 2. The chancellor, treasurer and judges are to meet ex officina annuam, being the 3d of Nov- ember, every year, in the Exchequer chamber, to nominate persons to be made sheriffs; and the manner is, the lord chancellor, treasurer and other high officers, being of the Privy council, together with the judges of both benches and the barons of the Exchequer, being assembled in the Exchequer chamber, nominate three persons to be preferred to the King, that he may pick one of them to be sheriff of every county. Dalh. Sh. 6. But it may be put off to another day. Cra. Car. 13. 595.

And yet the King by his prerogative may make and appoint the sheriffs without this usual assembly, and elect or not elect in the Exchequer, as is the ordinary practice at this day upon the death of any sheriff. Dyr. 275. Dalh. Sh. 6.
The sheriff in every of the shires of Wales shall be nominated yearly by the lord president, council and justices of Wales, and shall be certified by them; and after appointed and elected by the King as other sheriffs be, 3 Hen. 8. cap. 26. Dalt. Sth. 6.

The sheriff, before he doth execute any part of his office, shall publicly administer the oath under the hand and seal of the King's Remembrancer in the Exchequer, under pain of 100l. for the payment of his profits, and all other profits of the sheriffwicke; but these securities are never fixed, unless there be a deficiency in the sheriff's effects. Dalt. Sth. 7.

But there being in this oath something which was thought too hard (see Crol. Car. 26.) with respect to sheriffs, inferred thereof it is now enacted by the 3 Geo. t. c. 15. f. 18. that the following oath shall be taken by all high sheriffs, and that instead of the word of the time of Chafier, &c. viz. 1 A. B. do swear 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 preserve the King's rights and all that belongeth to the crown. I will not alienate to decree, sell or conceal the King's rights, or the rights of his franchises; and whatsoever 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 restored, or at least again; and if I may not do it by myself, I will certify and inform of the same to some of his judges. I will not require or delay to levy the King's debts for any gift, promise, 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 gift, reward or promise, nor for favour or hatred. I will disturb no man's right, 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, or whereby his right may be disturbed, injured or delayed. I will do all that I can with the best of my skill or advice of my justices, according to the best of my skill and knowledge, I will take no bail 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 business and occupation. I will duly let and return reasonable and due offices of my officers, and such other offices as shall be within the province of my office, and will do 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 suit of the King, for refusing to serve in the King's states according to his oaths infringed 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 infringed to be taken, amounts to a refusal of the office. Dalt. Sb. 15. Dyer 167. 3 Len. 116. Camp. 327.

If the sheriff be not in London, the oath may be taken by delinitum postfatum, 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 of the judges of assize for that county, or one of the masters in Chancery, who, it is said, may as well as the judge administer such oath without any delinitum. Dalt. Sb. 13. 14.

If the commissioners shall return the commission or writ, and the oaths be not taken when they were not taken, this is not a refusal. Dyer 168. Dalt. Sher. 14.

It is held, that the breach of the taking of this oath, altho' an high offence, is not however perjurious, 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 held, that a sheriff cannot be elected knight of the shire for that county for which he is sheriff. 4 Inst. 49. Lit. R. 326. Sir Simon Drew's Jor. 38. 436. It is held, that the sheriff is not only a conservator of the peace, yet it is enacted by the 1 Mar. b. 2. 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. Dalt. Sb. 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. Dalt. Sb. 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 try or sit in his 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 nonadlente 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 that county next chosen again, 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 sheriff 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 5 H. & Mar. and 1 An. such commission shall remain in full force for the space of six months next after such death or demise, unless this supersede, and be determined or revoked by the next successor. Dyer 165. Dalt. Sb. 17.

But the'fuch 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 prisoner to escape, that an action lay against him. 7 Co. 80.

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 Regii. Cro. Eliz. 12. Sir Lewis Mandeville's case.

By the fourth of H. 4. cap. 5, it is enacted, That every sheriff, being dwelling in the county, may within his bailiwick for the time he shall be sheriff, make a written office, and that the sheriff shall be sworn do 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 it is held that he may do a ministerial act, as make
a panel, or return a writ out of his county. Dalt. Sb. 22, 19 He. 4, 1.
But if the sheriff be beyond sea, and make a panel or any return there, and send it into England, it is not good, for he is an officer but only in England. Dalt. Sb. 22.
It is on a bowen 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 purpose he hath authority in the other county. Dalt. Sb. 23.
So if a prisoner of his own will make an escape, and fly into another county, the sheriff or his office, upon true faith, may take him again in another county. Plowd. 27. Dalt. Sb. 23.

4. Sheriff cannot dispose of his bailiwick; and of his power and duty in appointing 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 bailiwick, hundreds or wapentakes."

In the condition hereof it hath been holden, that this is a particular law, and cannot be pleaded; otherwise the judge cannot take notice of it. 3 Kb. 657. Ellis v. Nisson.

It hath been held, that a lease thereof, tho' no rent was ever received, is within the statute; the intent there- of being that sheriff should keep their counties in their own hands. 2 H. 7, 13.

Dalt. Sb. 23. 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 panel, be within the statute. Dalt. Sb. 24.

It hath been adjudged in the case of the sheriff of Northam, who took money for his bailiwick, which he first 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 extortion and other oppressions. Mar. 781. Stowell v. North.

By the 3 Geo. 1, cap. 15, feft. 10. "It shall not be lawful for any person to buy, sell, let or take to farm, the office of under-sheriff or deputy-sheriff, feal-keeper, county-clerk, thir-clerk, gader, bailiff, or any other office pertaining to the office of high sheriff, to continue with any such as a told office, on forfeiture of 500/., one moiety to his Majesty, the other to such as shall fee in any court at Wiltshire, within two years after the offence." Provided, that nothing in this act shall hinder any high sheriff from continuing an 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, or to hinder such sheriff or under-sheriff from receiving the lawful perquisites of his office, or from taking security for the due according the same; nor to hinder such under-sheriff, deputy-sheriff, feal-keeper, &c., for according the high sheriff for all such lawful fees as shall by be him taken, nor for giving security to do so, nor to hinder the high sheriff from allowing a salary to his under-sheriff, &c., or other officers.

Altho' the King by his letters patent granteth to the sheriff of the county, 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 ministerial parts of the office; for experience, says my Lord Hamb. proves, that many sheriffs cannot execute it themselves: from the antiquity thereof and necessity of this office, the law takes care of him, and on his being appointed, the law implicitly gives him power to execute all the ordinary offices of the sheriff himself that can be transmitted by law. Dalt. 3, 514. Hob. 13.

He is, says my Lord Hamb., in nature of a general bailiff to the sheriff over the whole thire, as others are over the hundred; and being in effect but the sheriff's deputy according to the nature of a deputation, is removable at an attorney's will, and the made irreproachable, yet may the high sheriff remove him; but having once taken the trust, he may totally remove him, yet he cannot abridge him of any part of his power. Hob. 13, 2 Brev. 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 anything in his own name, but only 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 bind a security to the King, and all persons whatsoever, for the performing his duty, &c.

The under-sheriff, before he intermeddle with the office, is to be sworn; this is inflicted by the statute 28 Eliz. cap. 12, and the form of the oath there prescribed. That before this statute the under-sheriff was never sworn. 1 Rid. Rep. 274. per Cbtr.

By the 2 Geo. 1, cap. 15, feft. 19. It is enacted, That all under-sheriffs of any counties in South Britain, except the counties in Wales and county palatine of Chester, before they enter upon their offices, shall take the following oath, viz. I, J. B. do swear, that I will well and truly serve the King's Majesty in the office of under-sheriff of the county of, and to promot my Majesty's profit in all things that belong to the said office as far as I legally can and will, and will preserve the King's rights and all that belongeth to the crown. I will not affent to decrees, lenity or cancel 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, rents, 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 do not make it myself, I will certify and inform some of my Majesty's judges thereof, and will not refuse or delay to lay the King's service to the interest of my Majesty. I will not take any money, &c., for anything under false pretences, &c.; I will neither give any consideration whatever by my self or any other person for me, or for my use, directly or indirectly, to any person or persons whatsoever, for the office of under-sheriff of the county of which I am now to enter upon and enjoy, nor for the profits of the same, or for any bailiwick thereof or for any 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 bailiwick there- of, or any other place or office belonging thereto. I will truly
truly and diligently execute the good laws and statutes of this realm, and in all things well and truly behave me-
self in the said office for his Majesty's advantage, and for
the good of his subjects, and discharge my whole duty
according to the best of my skill and power. So help me
God,

Which oath is to be administered by such commissioned
persons as are to be named to administer the oath to the high
sheriff, as often as a commission of dedum shall be forth-
said for that purpose, or by the baron, or one of them,
when the sheriff defers to be sworn in town. See 4 Bac.

Sheriffship, (Commissariatus) Is the sheriffship, or time of
a man's being sheriff. 14 Car. 1. cap. 21. 1

Shirworth, The extent of a sheriff's authority. 13
Eliz. cap. 27.

Sheriff-geld, A rent formerly paid by the sheriff;
and it is prayed that the sheriff in his account may be
discharged thereof. Rot. Parl. 5 Ed. 3.

Sheriff's-wealth, Seems to be a tenure by the service
of providing entertainment for the sheriff at his county
Derbyshire the King's baillis anciently took 6 d. of every
bovate of land, in the name of the Sheriff's-wealth. Ryl.
Plac. Parl. 63 Ed. 1. And it is said to be a common tax
levied for the sheriff's diet.

Shilling, (Monoflatus) Is specially used to be quitt of
at attachment in a court, in plaints flowed and not avowed.
Ship. Epis. 1130. See Denarios.

Shilling, (Sextum) An instrument of defence; (from
the realm,) used to cover; or be a shield, Scutum, a skin,
anxiety shields being made with skins.

Shilling, (Sax. Seling, Lat. Solidus) Among the English
Saxons called but for 5 d. afterwards it contained 16 d.
and after 20 d. In the reign of King William 1, called
the Conqueror, a shilling was of the same value as at
present, see Leg. H. 1. Democritus.

Shillings, Est emenda pro transgressione facta in nati-

Rading. MS.

Ship-money, Was an imposition charged upon the
ports, towns, cities, boroughs and counties of this realm,
in the time of King Charles I. A tax commonly called
ship-money, under the Great seal of England, in the year
1635 and 1636, for the providing and furnishing certain
ships for the King's service, &c. which was declared to be
counter to the laws and statutes of this realm, the
punishment of right, and liberty of the subject, by flat. 17
Car. 2. cap. 1.

Shipper, Is a Dutch word signifying the master of a
ship, mentioned in the fl. 1 Jac. 1. cap. 3. We use it
for any common seaman, and commonly say, Skipper.

Shippry, In Kent, its inhabitants taxable towards the
repair of the King's ferry. 18 Eliz. cap. 10.

Shops, No shops shall be reformed to come into
port, or restrained in selling their goods, 25 Ed. 3. c. 13.
2 R. 2. c. 4.

Shall not be forfeited for small things put on board
without the owner's knowledge, 38 Ed. 3. fl. 1. c. 8.

None shall ship goods but in ships of the King's
lience, 29 Eliz. 1. fl. 1. c. 13. 14 R. 2. c. 6. Repelled,
1 El. c. 13.

Ship of the King's lince shall be freighted prefer-
able to others, 6 R. 2. c. 8. 4 H. 7. c. 10. Repelled,
1 El. c. 13.

Owners of ships shall take reasonable freight, 14 R. 2.
c. 6.

No Gofaen or Guieu wines to be imported but in Eng-
lish shipping, 1 H. 7. c. 8. or Tileaffe wood, 4 H. 7. c.
10. 7 H. 8. c. 2. 23 H. 8. c. 7. Repelled, 1 El. c. 13.

The freight of goods limited, 5 & 6 Ed. 6. c. 18.

The penalty of freighting foreign ships, 1 El. c. 13.
Foreign ships not to be employed a-cuffwise, 6 El. c. 5.
2 R. 2. c. 8. 12 Car. 2. c. 18. f. 6.

What mariners may take apprentices, 6 El. c. 5. f. 12.

A ship shall not be forfeited for exporting corn, unless
the owner knew it, 6 El. c. 5. f. 24.

Vol. II. N°. 126.
For the government of the navy, 3 Geo. IV. c. 25. The method of guarding ships, 6 & 7 W. IV. c. 12. f. 10.

For ships not to carry plantation goods, 6 & 7 W. IV. c. 22. f. 23.

Sums to the plantations to be registered, and to have a certificate, 7 & 8 W. IV. c. 22. f. 17.

Encouragement given to commanders and mariners to defend ships, 15 & 16 W. IV. c. 7. f. 11.

Lights may pass in the port of London with corn, &c. by being free to board and search, 16 W. IV. c. 1. f. 12.

Certificates of discharge to be indorsed on coaling bonds, 1 Ann. fl. 1. c. 26. f. 3.

Defraying ships by mariners to the prejudice of owners or merchants, felony, 1 Ann. fl. 1. c. 9. f. 2. & Geo. III. c. 17. f. 20.

For enabling the master, &c. of Trinity-houfe to rebuild Edifice, light-houfe, 4 Ann. cap. 20. 8 Ann. c. 17.

Toll to Edifice light-houfe to be paid by ships passing to and from Ireland, 8 Ann. c. 17. f. 1.

Ships prohibited to float at the King's moorings, or fifteen mile of the King's ships, 17 Geo. IV. c. 17. f. 21

Directions for procuring ships in distress, 12 Ann. fl. 2. c. 18. 26 Geo. IV. c. 19. f. 6.

Raw flax not to be imported from the foreigner, except from the Grand Seignior's dominions, 6 Geo. I. c. 14.

Fire timber may be imported from Germany, 6 Geo. I. c. 15.

Hovering ships under 50 tons may be convocled to come into port, 6 Geo. I. c. 21. f. 31. amended as to the bonds, by 12 Geo. II. c. 22.

Penalty on matters suffering uncultivated goods to be delivered, or wool, laden, 6 Geo. I. c. 21. f. 32.

Ships of 50 tons importing brandy, &c. forfeited, 6 Geo. I. c. 21. f. 29.

Rule for the admeasurement of ships, 6 Geo. I. cap. 21. f. 33. 32 Geo. II. c. 25. f. 11.

Ships of 40 tons importing brandy, &c. forfeited, 8 Geo. I. c. 18. f. 1.

Carpenters of ships of war to take goods on board, 8 Geo. I. c. 24. f. 8.

Penalty for defooperation (hid). one moity to informer, the other to Greenwich hospital, 8 Geo. I. c. 24. f. 20.

For maintenance of the Skerries lights, 3 Geo. II. c. 15.

Not to take in gunpowder above Blackwall, and to land their gunpowder below Blackwall, 5 Geo. II. c. 20. f. 2. & 3.

Ships not to fire guns above Blackwall after sun-set, 5 Geo. II. c. 20. f. 4.

Not to melt pitch or tar on board above Blackwall, 5 Geo. II. c. 20. f. 4.

Ships not to moor in St. Saviour's dock, 5 Geo. II. c. 70. f. 10.

Owners not to be answerable for the master, &c. beyond the value of ship and freight, 7 Geo. II. c. 15.

Where seamen may file a bill in equity to discover the taking of goods lost, 7 Geo. II. c. 15. f. 2.

Ships may be navigated with three foreigners during the war, 13 Geo. I. c. 2. 28 Geo. II. c. 16.

Aliens may import the goods of Spain, &c. in British ships, 17 Geo. II. c. 36. f. 4.

A reward of 20,000l. for discovering the North-wind packet, 18 Geo. II. c. 36.

Rules for the government of ships of war, &c. 18 Geo. II. c. 35. repealed 24 Geo. II. c. 23. and that act extended to vessels on the lakes in America, 29 Geo. II. c. 27.

Prize ships to be deemed British built, 20 Geo. II. c. 2.

Agriculture of burning or destroying ships excepted out of the general pardon, 20 Geo. II. c. 52. f. 14.

Commission of appeals confirmed, 23 Geo. II. c. 3.
S I G

Shooting. Shooting at persons in any dwelling house, or other place, felony without clergy, 9 Geo. 1. c. 22.

Shuffling. Are those who deal frauds privately out of shops; which being the value of sl, though no person be in the shop, is felony excluded clergy, by stat. 10 Geo. 3. c. 51.

Shooting at persons in the heat. Seem to be words to diftinguish falls of sheep; shooting signifying the falls after the flocks are thrown off; but Merling, alias Merling, the flocks fled off after they are killed, or d. c. E. 4. c. 1. 4. E. 4. c. 3. 12 E. 4. 5. and 14 E. 4. c. 3. Howbeit in some parts of England they understand by a Shooting, a flock or whole flock is thrown off; and by a Merling a sheep that dies. Convill. edit. 1777.

Shooting. The ancient custom of the city of Exeter is, when the chief lord in fea cannot be awar'dered of the rent due to him out of his tenement, and no diftre's can be there lev'd for the same, the lord must come to the tenant and there take a Bone, or some other dead thing of the said tenement, and bring it before the mayor and bailiff; and thus must be done seven quarters-days successively; and this is called a Gible. And if on the fourth quarter-day the lord be not satisfied of his rent, and the tenant does not make it up to the lord, then the thing is to be brought to the said lord to hold the same a year and a day; and this is called Goullock. And then forthwith proclamation shall be openly made in the court, That if any man pre-tends any right to the said tenement, that he appear with it in the year and day then next following, and Jarvis, the lord, and his bailiffs, to hold the sa^ thing as to be made, and the rent not paid, then shall the lord come again to the said court, and pray, that according to the said custom, the said tenement be adjudged to him in his demeline as of fee, according to the intention of the law in such like cases, which is commonly called a caveat per prohentutum; and this custom is called novelty, and in French force de loi; and for the lord shall have from thenceforth the said tenement, with all its appurtenances, to fee in him and his heirs for ever. Baxit.s Antig. Exet. 48.

Shrewsbury. Regulations of the drapers there, 8 Eliz. c. 7. 14 Eliz. c. 12. The streets to be paved, c. 78.

Sib y Som. (Sax.) i. Pax et concordia. Sylvianus de Concll. 1. tom. edl, 519.

Sibi, or Sirfa, a ditch: From the Sax. Sic, lacuna. It is mentioned in the Monogliion, 2 tom. pag. 159.

Sibi, Silentiam & Seclatum. A little current of water, that used to be dry in the summer. Inter duos fictiti, &c. Mon. Ang. 2 par. jis. 436. Also a water-lurrow or gutter.

Silenus, was a fortune money current among the old English, of the value of two pence: We read it in Ephes, vi, 8. with a long gloss, and sometimes an implication that if any of the brotherhood did, contrary to the canons, receive a monk who left the cloyster, sine littera pacifict, &c. he was to pay thirty Silus, fifteen to the bishop, and the other fifteen to the abbot, whose monk he received without the leave of the prior. Convill. edit. 1777.

Silent, or Sealed. In old English, a written out, where the full was not executed. C. lib. 4. fol. 556. It takes name from the words. In its example, Carusus severens Dei gratia, &c. Vicem. Midd. salatem. Prseceptum, &c. first alias praecipetm, quod non omitte, &c. and so as in the Cenisand, in his Treat of Proceeds, in the end of his Eirenologia.

Silence, or Naknaten. Are thieves that are yearly chosen, according to the custom of every parish, to afflict the churchwardens in the enquiry, and preventing such offenders to the ordinary as are punishable in the Court Churchwarden, in Convill. edit. 1777.

Silhoultes, Are mean or balks kept out of woollen or on the sides of arable ridges or lands. Mon. Ang. vol. 2. p. 275.

Sigillium, A seal for the sealing of deeds and charters, &c.

Sigillum. Before the time of William the Conqueror the English did not seal with wax, but they usually made a golden crotail or the part of a piece of lead, which belonged to the grant with a flinging of the grant itself, without figuring, or any winnower. The colour of the wax with which the King's grants were sealed, was usually green, to signify rem in perpetuo vigere permanuaret; and the impression in laymen feals was, a man on horseback with a sword in his hand, till the year 1218; and then they began to engrave their coats of arms on their seals. The seal of shops, by a decree of cardinal Otto, who was legate here at Rome, in the year 1237, were to have Sigillum, pata nomen dignitatis, officii, seu collegii, et eam illorum proprium nomen, qui dignitatis vel officii perpetui groutex habitent, in sulphurium notis & charactaribus manuscriptis, quae Sigillum authenticum habuerit quam illos. Sigilla, (from the S. X. Segel, seum) A flat, mentioned in the laws of Ethelred, made at Wintage, cap. 24.

Sign manual, Is where any bill or writing is signed under the hand of the King, and usually in order to the sealing of the King's grants, &c. through the office of the keepers of the seal. Counterfeiting Sign manual made treason, stat. 1. Mith. 2. c. 6. See Seal.

Signet, Is one of the King's seals, wherewith his private letters are sealed, and is always in custody of the King's secretarium, and there are four clerks of the signet office always in attendance, &c. sig. 556. See Seal.

Signification, Is a writ de communique suo, and exflourth out of the Chancery upon a certificate given by the ordinary, of a man that stands absolutely communcated, by the space of forty days, for the laying him in gaol without bail or mortgage, until he submit himself to the authority of the church. And it is so called, because the word Significator is an emphatical word in the writ. There is also another writ in the Register, sig. 7. directed to the justices of the bench, commanding them to flay any fault depending between fuch and fuch, or in reading of any communication alleged against the plaintiff, because the presence of the ordinary, that did communcated him, is appealed from, and the appeal yet depends undecided. Convill. edit. 1777. See Communication.

Signature of deeds and wills is necessary to make them binding: In the time of Edward I. there was an officia! circumstance, without which 'tis not a will; for this is expressly required by the stat. 29 Car. 2. c. 3.

Signum A cross prefixed to the name of a subscrib'ng witness, as a sign of assent and approbation to a charter, or other deed, commonly used among the Saxons, and some of our first Normans, before the common use of either affixed or appos'ding seals. Convill. edit. 1777.


Silk, Importation of wrought silk prohibited, 33 H. 8. c. 5. 3 Ed. 4. c. 3. 2 Ed. 4. c. 1. 8 Eliz. c. 10. 1 H. 7. c. 9.

Certain species of wrought silk prohibited, and other wrought silks permitted to be imported, 19 H. 7. c. 21. Explained by 3 Guar. c. 3. 21.

Regulation of the trade of silk throwing in London, 13 Car. 2. c. 15. 2 Ed. 4. c. 13. 8 Ed. 4. c. 10. 12 H. 3. c. 3. 1.

By-laws to restrain the number of spindles to be employed by the silk throwers, or to restrain them to take leaves than three apprehen. made void, 20 Car. 2. c. 6.

Silk thrown in the gum, 1 H. 7. & M. 5. c. 5. 2.

Wrought, 2 H. & M. 7. c. 2. c. 3. 4. 2 H. & M. c. 5. 5. 2. & 9 H. 10. c. 3. c. 4. 8 Sc. 11. & 12 W. 3. c. 3. c. 1.

And raw silk, 2 H. & M. 7. c. 2. c. 4. 5. & 8. Sc. 12. c. 3. 5.

See Silk, or Boster, to what duties liable, 4 H. & M. c. 5. 5. 2.

Thrown silk to be imported only from Italy, 2 H. & M. & M. 1. c. 9. 1 An. fl. 1. c. 27. c. 28. & 2. 3. 6. & 13. 12.

Restrictions on importing amalgams and loofings, &c. & M. 5. cr. 7. 5.

Permission to import Italian thrown silk, 5 H. & M. c. 3.

Foreign
Forfeiture, &c. to be sealed at the Custom-house, 5 Geo. 2, c. 20, s. 45. & 6 & 7 Geo. 3, c. 18.

Alamodes, &c. not sealed, forfeited, 8 & 9 Geo. 3, c. 36. 9 & 10 Geo. 3, c. 43, s. 5.

No drawback on exporting foreign alamodes, 8 & 9 Geo. 3, c. 36, s. 5.

A duty on per pound weight on imported luffnings and alamodes to 13 Geo. 3, c. 36.

Alamodes and luffnings to be imported only at London, 9 & 10 Geo. 3, c. 43.

Charter of the luffning company confirmed, 9 & 10 Geo. 3, c. 43.

Penalty on officers of King’s ships importing filks, 9 & 10 Geo. 3, c. 43, s. 4.

Penalty of 400l. and pillory on altering the custom-house or company’s marks, 9 & 10 Geo. 3, c. 43, s. 5.

Penalty on custom-house officers colluding, 9 & 10 Geo. 3, c. 43. s. 6.

Wearing French alamodes, &c. prohibited, 5 Ann. c. 20.

Officers of customs only have power to seize, 5 Ann. c. 20, s. 3.

Foreign filks mixed with gold or silver, forfeited, 6 Ann. c. 19, s. 14.

A duty on printed filks, calicoes and fleecos, 10 Ann. c. 4.

Penalty on printing filks, &c. at other places than their usual refence, to make a particular entry of the filks before printing, 1 Geo. 2, c. 36, s. 21.

Premium on filk manufactures exported, 8 Geo. 1, c. 15.

Two thirds of the warp to be filk, 9 Geo. 1. c. 8, s. 9.

Want of certificate supplied, 1 Geo. 2, c. 17, s. 9.

The filk in the filk to be of double the value of the bounty, 1 Geo. 2, c. 17, s. 10.

The importation of raw filk from the Straights, (except from the Grand Seignior’s dominions) restrained, 6 Geo. 2, c. 14.

Reward to Sir Thomas Lamb for inventing filk engines, 5 Geo. 2, c. 4.

A certain quantity of Spanish filk permitted to be imported, 14 Geo. 2, c. 4.

Raw filk of China to pay the same duty as Italy, 23 Geo. 2, c. 9.

Raw filk of the plantations may be imported free, 23 Geo. 2, c. 20.

Raw filk of Persia, bought in Raffia, may be imported from any port in Raffia, 23 Geo. 2, c. 34.

Foreign filks and velvets to be sealed at the custom-house, 26 Geo. 2, c. 21.

On action or information for the penalties of this act, defendant to give bail, 26 Geo. 2, c. 21, s. 8.

Organized Italian thrown filk may be imported from any port in any vessel, till 1 December 1757, 30 Geo. 2, c. 17.

Penalty of importing foreign filk ribbands, lace or girdles, 3 Geo. 3, c. 21.

Act to prohibit the importation of foreing filks and velvets for a limited time, and for preventing unlawful combinations of workmen employed in the filk manufacture, 6 Geo. 3, c. 28.

Silk-bubble and thopulber, (mentioned in flat. 14 Carr. 2, cap. 15.) is a trade or mystery that wins, twills and spin, or throws filk, so fitting it for use; they are incorporated by the said act, wherein there is mention also of filk winders and doublers, which are members of the same trade. Cowlil. ed. 1724. See 20 Carr. 2, c. 28.

Silva carnea. See Sulfa carnea.

Simnell, (Simnellius) From the Latin Simnus, which signifies the front part of the flower; pennis similligenus. Simnill bread. It is mentioned in flat. afffjcas re, (and is still in use, especially in Lenn.) bread made into a simnill thick, of two fillings, lets than wheat-bread. Stat. 51 H. 3. The English Simnell was the purest white bread. Cowlil. ed. 1727.

Simoni, (Simonia, venditio rei farce.) So called from Simon Albugi. It was agreed by all the justices, Trin. 8, 31. That if the person present any person to a benefice with cure, for more, that presentation, &c. is void. But if the person was not before the said act. No statute gives the presentation to the King. Ca. 12 Rep. 174. Simony may be by compact between strangers, without the privy of the incumbent or patron. Cre. 1 par. fol. 331. Banknash’s case. Lib. Rep. fol. 165. Njg. Rep. fol. 22. Fujiad’s case, &c. 3 Hig. fol. 153.

Some authorities are printed for means trepanum for persons guilty of simony, and tell us of a person who took off the encaps of Grosfald, an archbishop of Alberin, and talking it, the people, lfe Grosfaldus qui eff sub filio corpe (s not de alta dicta) c. Simonus, &c. for para mens, i.e. by bribery, for para mens a benefice, i.e. by tendons and fliver, for para mens ob alia beneficia. Cowlil, ed. 1727.

Simony, so called from Simon Magus, is the buying or selling holy orders, or some ecclesiastical benefice. An ecclesiastical benefice, in the larger fense of it, in which it is here used, comprehend not only parochial benefices, but all ecclesiastical dignities and promotions. As by this offence worthy and learned men are kept out of the church, and a door is, to the great scandal of religion and prejudice of morality, opened to persons by no means qualified to discharge the duties of the sacred function, it is of the utmost confecution to society that it be prevented. With a view upon this case, several statutes were only made, by which a very strict oath was enjoined; and it was punished with deprivation or disability, as the cafe required. It has been said, that this was no offence at Common law; and for this the case of Gregory and Oldbury, in Mor. 564, is relied on. It is indeed there held, that a bond to pay money on a nonsensical contract is good, because simony is no offence at the Common law, and such bond is not made void by any statute: but by attending to what is said in other books, the contrary perhaps will appear. In 1 Hig. 17, b. 89, a. simony is spoke of as a thing so detestable in the eye of the Common law, that a plaintiff in quity imputed could not, before the statute of Wymynber 2, recover damages for the loss of his presentation, it being considered as a thing of no value; nor could a guardian in facec present to an advowson in the right of his heir, because, as he could take nothing for it, he could not bring it to account. This doctrine is confirmed in 3 Hig. 176, and the book adds, that it is the more odious to the Common law, because it is frequently accompanied with perjury, for the preteere is sworn to commit no simony. In Cic. Ob. 353. Mackater and Tinduris, it is said that this has by the law of God and of the land been always accounted a great sin. In Hig. 167. Wiscott and Philipson, it is laid down, that a bond on a simoniacal contract is against lai, because ex turpi causa, and contra bonas notis; nay, that it is as void as an uncertain bond, which, if paid by an executor, is a ducatus. The same is held in Cre. Carr. 425. Bryse and Manning. In Corb. 252. Barlet and Vynor, such bonds are found to be void as being against law, altho’ they are not so declared by the statute. Other authorities might be added, but these are freely enough to shew that the better opinion is, that simony was an offence at the Common law. As to the consideration of the animadversions of the offence, nor the provision made for preventing it, see Cre. or Common law. The learned and judicious Cowlil is evident to put a stop to this mischief, it was at length restrained under severe penalties by stat. 31 Eliz. cap. 4, Dec. Abr. 465.

1. What shall be deemed simony? and the penalty on this offence. 2. How for bonds of reification are lawful; and the power exercised over such bonds by the court of Chancery. 3. Whether the ordinary is obliged to accept a reification on such bond; and some objections to these bonds considered. 4. What shall be deemed simony? and the penalty on this offence. By lat. 31 Eliz. c. 6, s. 25, it is enacted, * That if any person or person, loder politick or corporate, shall
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
affurance of, or for any sum of money, reward, gift, profit,
be, or any other person, or any corporation, or
shall make, settle, or cause to be
made, settled, or for, be,, or permit any person to any
benefice with care of souls, dignity
prebend, and living ecclesiastical, or give or beow
the fame for, or in respect of any such corrupt cause or
consideration; that then every such prestation, colla-
tion, gift and beowling, and every admirition, institu-
tion, estate, benefice, benefice, or benefice, or benefice,
shall be void, frustrate, and of none effect in law; and that
it shall and may be lawful for the Queen, her heirs and
successors to prestation, collate unto, or give, or below
every such benefice, dignity, prebend, and living eccle-
siastical for that time or turn only; and that every per-
son 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 affu-
rance, shall forfeit and lose the double value of one year's
profit of every such benefice, dignity, prebend, and living
ecclesiastical; and that every person or persons, or
not corruptly taking, procuring, seeking, or accepting any
such benefice, dignity, prebend, or living, shall thereupon, and from thenceforth, be adjudged a disabled perf on in law,
to have or enjoy the same benefice, dignity, prebend, or living ecclesiastical.

By 57. 6. it is enacted, That if any person shal for
any sum of money, reward, gift, profit, or commodity
whxxxever, directly or indirectly, other than for lawful
and usual fees, or for or by reason of any promise, agree-
ment, grant, covenant, bond, or other assurance of, or for
any sum of money, reward, gift, profit, or beow whatso-
ever, directly or indirectly, that shall, in fact, intiate, inti-
flal, inud, invert, or place any person in or to any
benefice with care of souls, dignity, prebend, or living ecclesiastical; that then every person to offending shall
forfeit and lose the double value of one year's profit of
every such benefice, dignity, prebend, and living ecclesi-
siastical; and that heereupon immediately from and after the
inveftment, installation, or induction thereof, had the
same benefice, dignity, prebend, and living ecclesiastical,
shall be eftoons merely void; and that the patron or per-
on, to whom the advowson, gift, prestation, or colla-
tion, shall by law appertain, shall and may by virtue of
this act present or collate unto, give or dispose of the
same benefice, dignity, prebend, or living ecclesiastical
in such benefice, and to all intents and purpofes, as if the
party to admitted, intiated, intalled, invested, invested,
or placed, had been or were naturally dead.

By 57. 7. it is provided, That no title to confer
or present by lapfe, shall accrue on any voidance men-
tioned in this act, but after six monlhs next after notice
given of such voidance by the ordinary to the patron.

By 57. 8. it is enacted, That if any incumbent of
any benefice with care of souls, shall corruptly resign or
exchange the same, or that corruptly take for or in re-
spect of resigning or exchanging the fame, directly or
indirectly, any pension, sum of money, or benefit what-
soever; that then as well the giver as the taker of any
such pension, sum of money, or other benefit corruptly,
shall lose double the value of the sum so given, taken, or
had.

By 57. 9. it is provided, That nothing contained in
this act shall in any wise extend to take away or refrain
any punishment, pain or penalty limited, prepaid, or
inflicted by the laws ecclesiastical, for any of the offences
before in this act mentioned, but that the same shall remain
without execution, as it might be before the making of this act.

By 57. 10. it is enacted, That if any person or
persons whatsoever, shall at any time receive, or take any
money, fees, reward, or any other profit, directly or in-
directly, for, or by reason of any promise, agreement, covenant,
un, or other assurance of, or for any such money, reward,
fee, reward, or any other profit, directly or indirectly,
either to him or themselves, or to any other of their or
any of their friends, all ordinary and lawful fees only
Vol. II. No. 126.

excepted, or for to procure the ordaining, or making
of any minister or ministers, or giving of any orders or li-
cence, or licences to preach; that then every person and
persons to offending, shall for every such offence forfeit
and lose the double value of one year's profit of benefice
of England; and the party so corruptly ordained, or male
minister, or taking orders, shall forfeit and lose the sum of
ten pounds; and if at any time within seven years
next after such corrupt entering into the ministry, or re-
ceiving of orders, he shall accept, or take any benefice,
living, or promotion ecclesiastical, or shall thereupon
from and after the induction, investiture, or installation
thereof, or theretoo to, the same benefice, living, and
promotion ecclesiastical, shall be eftoons merely void; and
that the patron or person to whom the advowson,
gift, prestation, or collation, shall by law appertain,
may by virtue of this act present or collate unto, give or
dispose of the same benefice, living, or promotion eccle-
siastical, in such benefice, to all intents and purposes, as if the
party so induced, invested, or intalld, had been or were
naturally dead; any law, ordnance, qualification, or
dispensation to the contrary notwithstanding.
The one moiety of all the forfeitures given by this act shall be to
her majesty, her heirs and successors, and the other moiety
to them or that will use for the same by action of
debt, bill, plaint, or information, in any of her Majesty's
courts of record.

A document not within the words of the statute; yet,
asa corrupt prestation thereto is within the mischief
intended to be thereby remedied, it is within the
meanings of it. 

For the same reason the corrupt promoting to, or ob-
taining of a curacy, has been held to be simony. Carth. 
495. Bibl. of St. Davy's and Law.

This offence is more frequently committed when a
church is void; but it may be committed when it is full.
If a contract be when a church is full, to give a sum of
money for a prestation to it, when it shall become void,
this is a financial contract. 1 Brand. 7.

So for the next avoidance of a church, with intent to
pretent a certain person, and the prestation that is
then void, is simony. Lane 102.


So if one purchases the next avoidance of a church,
with intent to present his son or kinsman, and does pre-
tent the person intended to be prevented, this is simony.
No. 25. Gibs. 390

So the purchase of the next avoidance of a church
when the incumbent is sick or near dying, with intent to
pretent a certain person, and the prestation that is
then void, is simony. Lane 102.


It has indeed been said, that if a father, the incumbent
being sick, purchases a living without the privity of his
son, it is not simony, although it be with design to
pretent the son, and the son is afterwards presented; and
to this purpose is the case of Smith and Shilburn, Pufb. 
41 Eliz. A. L. 685. The doctrine laid down in this case has
been since contradicted, and particularly in the case of
Wincheasb and Puffington, No. 25. Pufb. 15. Famcr, some
years after. Nor does the reason given in it, that a father
is bound by nature to provide for his son, hold.

If the purchase of a living when full with intent to pretent
a certain person is void, then, within the statute, how
can it be lawful, as the words of the statute are general,
for a father to do it? A parent is by nature bound
to provide for his son, but this obligation can never extend
to the doing things prohibited by law. This way of
reasoning would make all simony lawful; for as every man
remains in his father's living, nearly as much as the law of nature
to provide for himself, as his father is living, if every man might purchase a living for himself.

4 Bot. Air. 469.

Notwithstanding these determinations, that if one per-
son purchased the next prestation of a benefice when
full, with intent to present a certain person, and did
pretent him, it was simony, it is now not uncommon
for a clerk himself to purchase for himself the
next turn in a living? To remove this it was enacted, 8 F.

That
That if any person shall have money or profit, in his own name, or in the name of any other person procured for or on account of any benefice, and be presented or collated thereto, it shall be deemed to all intents and purposes a simoniacal contract. 12. Jam. J. c. 2. cap. 12. par. 2.

From all these authorities it appears, that although it be lawful, except in the cases excepted, to purchase the next benefice when it shall fall vacant, there is great danger of being guilty, at least in fowe conscience, of this ofence.

It is fit it should be, else men would be for ever purchasing for their sons and friends, and the almost necessary consequence of such a traffic in livings, would be the filling the church with very improper persons. 4 B. & C. 295.

It is equally simony when the presentation is by a person usurping the right to present, as if it had been by the person having a good right. 3 Lev. 153.

So if a presentation be by one usurping the right of patronage, and procuring a quare impedit for removing his clerk, who is after removed, the living is void, this is simony, for the church was never full of that clerk; and by this means the statute might be eluded, for it would only be getting an usher to present while the living was void, and then filling it. 3 Lev. 115. R. Jeff. Harmer, S. C. 2 Vent. 32.

A present of the wife of the patron is simoniacal, although the patron is not privy to it. 1 Rot. Try. 255. Cres. Soc. 385.

If a clerk contracts to give money for being preferred to a church, and is after preferred gratis; this is simony. Lane 103. Kitch. v. Calvert.

In this case the clerk is the unfit person, for having at that time been capable of intending to buy a living corruptly. It also implies some defect in him; for the presumption is that persons well qualified will always be preferred, and have therefore no need to purchase. With this agrees Cres. Elin. 789. where simony is said to be evitable in a person defined ad emendam vel vindendi. Cres. Soc. 322. Bawdler v. Mackeller. Sid. 320. 3 Lev. 337. Lane 103. Kitchin v. Calvert.

A second brother, having a right to present, made a corrupt contract to present a certain person; but in order to evade the statute furrendered the right of presentling to his elder brother. He is not being privy thereto professing the person who by the agreement was to be preferred. It was held that the corrupt contract was simony, and that its being perfomed by an innocent person makes no alteration in the case. Lane 73. Calvert v. Kitchen.

An agreement was betwixt Richards's friend of Rough- ton, and Taylor, that Roughton should present Hide, and that Taylor should pay Richards 200l. per ann. for six years, in case Hidé to long lived, for the use of Roughton. In quare impedit Hidé pleaded he had no notice of the agreement at or before his presentation. On demurrer it was held that the corrupt contract was enough, and that it was immaterial whether he had notice or not. 3 Lev. 338. Res v. Hidé and others.

If a stranger, the church being void, contracts with the patron for a grant of the void turn, and presents a clerk not privy to the contract; yet, although the grant being of a chöfe in action is void, as the contract is made by the grantor, he is not to be considered as an usher, but as one simoniacal praeceptor. Cres. Elin. 758. Baker v. Roger.

So where a father, the church being void, contracts with the grantee of the void turn to permit the grantor to present his fon, and it is done, this is a simoniacal presentment. 1 Rot. Try. 255. Bouch v. Potter.

So if a father, in consideration of a clerk's marrying his daughter, doth covenant with the father of the clerk, to procure him a presentation to a certain church when it shall become void, and he is afterwards therein preferred, it is a simoniacal promotion. Cres. Car. 415.

Bolt v. Manning.

These three last cases may serve to confirm what has been observed, that in the case of simony, it is unlawful for a father to do what may not be done by a stranger.

It is a general agreement to be paid five pounds per annum to the widow of the last incumbent, or ten pounds per annum to his son, to be a student at Cambridge and unpreferred, neither of these is simony. Ng 142. Baker v. Mensford.

A bond with condition that the incumbent shall not be able to keep his living within a year from his living is not simoniacal; this being a lawful condition. 1 Rot. Rep. Carey v. Yes.

A. covenanted that B. his fon should marry C. the daughter of D. in consideration of this marriage A. co- venanted to advance 300l. for his daughter's portion, and A. covenanted to settle certain lands on B. and C. there were also covenants on the part of A. for the value of these lands and quiet enjoyment, and a covenant on the part of D. to procure a certain benefice for B. on the next avoidance of it. It was held that this was no simoniacal contract, not being in consideration of the marriage; and independent of it being void without any apparent consideration, and as not averred to be a simoniacal contract shall not be so intended. Cres. Car. 426. Byrne v. Manning. The doctrine laid down in this case was confirmed in Lusu. 343. Pyle v. Patten.

2. How far bonds of regination are lawful; and the parson exerced over such bonds by the court of Chancery.

A bond of regination is a bond given by the person intended to be preferred to a benefice, with condition to re- sign the fame; and is special or general. The condition of a special one is to resign the benefice in favour of some certain person, as a fon, kinman, or friend of the patron, or to hold the benefice for such a term of years as the person giving the bond may require; and in a general bond the incumbent is bound to resign on the requisition of the patron. 4 Bac. Abr. 470.

A bond with condition to resign within three months after being required, to the intent that the patron might pre- sent his fon when he should be capable, was held good; and the judgment was affirmed in the Exchequer cham- ber; for that a man may without any colour of simony bind himself for good reasons, as if he takes a second be- nefice, or if he be non-resident, or that the patron may pre- sent his fon, to resign; but if the condition had been to let the patron have a lease of the glebe or tithes, or to pay a sum of money, it had been simoniacal. Cres. Soc. 247. Jones v. Lawton.

The doctrine laid down in Jones and Lawton, which was in the case of a special bond, was not many years after extended to that of a general bond, and the judgment in this last was also affirmed in the Exchequer cham- ber. 1 Cres. Ch. 180. Badington v. Wind.

The authority of those two cases having been repeatedly re- cognised, at length it was considered as a point settled, that a general bond of regination is good, and the court refused to let the validity of it be called in que- stion. Sir. 227. Petis v. Courts v. Carlfett.

So in a late case, Mr. Serjeant Deeping being about to argue against the validity of such a bond, he was ftopped by the court. MS. Rep. Thin. 27 Geo. 2. Wyndam v. Bauer.

If a bond of regination, which ought only to be made use of to keep the incumbent to reside in or good behaviour, be made an improper use of, the court of Chancery will interfere. Chan. Proc. 513. 2 Chon. Rep. 399.

A perpetual injunction was granted against such a bond, because it appeared on hearing the cause, that the patron had made use of it to prevent the incumbent from de- manding his tithes. 1 Vern. 414. Dufifin v. Band.

But it was to be reposed that a judgment obtained on a bond to resign upon reques, it appeared to have been offered to the incumbent, that if he would give 700l. he should not be sued upon it. Satisfaction was
was ordered to be entered upon the judgment, and a per- 
fect injunctin was granted. A new bond of refigna-
tion in penalty of 1,001, was made to this bond, but no action was to be brought on it, without leave of the court: And the lord keeper said he did not know that bonds were used before the statute; that they had been freely allowed only to preserve the benefic from the abolition of the order, and that he had accepted the refignation, that he did afterwards accept it, that it fell from the good men on this occasion, is enough to "render the doctrine of the two last cafe fupificious: For if there be law, some notice would undoubtedly have been taken of them. This was not indeed in the cafe of a re-
fusion bond, because it was not in that shape a bond, but if the ordinary cannot refuse where as here a clerk would refuse merely to take another benefic, it would be Sfrange to hold he may refuse a refignation made at the request of a patron, in conftuence of an agreement with him, which has been again and again determined both at law and in equity, he has a right to make. In the cafe of Rainingham v. Griffith, Easter Term 7 Geo. 4.
Whatever doubt may still remain, as to the ordina-
y's being obliged to accept a refignation on such a bond, these two things have, as will presently appear, been de-
termined; that the patron cannot preftin again til he has accepted it, and that whether he does or not, the ob-
ligor is liable to the penalty of the bond, if he undertakes it is usually done for the acceptance of the ordinary. 4 Bac. Abr. 473.

If a presentation be made before the bishop accepts the refignation of the late incumbent, it is void. Caife in the time of 2 Geo. 1, 2 Spen. 175.

The bishop as to the oblige is a stranger, and if an oblige undertakes for the act of a stranger, he is at his peril, as is held by Sound. 215. to procure it. MS. Reports. Hilari. 2 Geo. 2. Hylar. v. Gray.

The refult of the whole is, that bonds of refignation are good in law, and that equity will refrain all improper use of them. It is not always true, but it is so much oft-
ter than superficial and hasty thinkers imagine, that the law, and particularly that part of it which is deduced from judicial decisions, is subject to change, and it may perhaps be fhewn that it is so in the present cafe. The attempting this will at leaft be excusable, be-
cause some great and good men have exprfied their dislike of thefe bonds. 4 Bac. Abr. 473.

The general objection is, that divers mischiefs may enile from fuch bonds, for that a corrupt patron may in many inftances make an ill ufe of them. Some other an-
swer might perhaps be given to this general objection; but the common one, however trite it be, is as good as any, that there is no concluding against the ufe of any thing because there is a poifibility of its being abused. If any abuse is feared, the remedy is at hand. If not, they should be ranked among thofe things which, being out of the reach of human knowledge, cannot be provided against by human laws. 4 Bac. Abr. 473.

The principal of the particular objections is, that which is reported to have fallen from Hill Ch. J. Camb. 394. this is, that this refignation bond comes as near fimo as po-
sible; it being easy to procure a round sum of money thereby. By making the penalty of the bond accordingly to the value of the benefice, and agreeing privately that the money shall be paid, it would without doubt be an oblique way of felling it, and more than come near, for that it would not be worth half so much in any other way, or not as easy a one to, do the same thing, this objection would be unfurmountable; but if there is, it can never be of much importance to ftop this up. The fame clerk, whole conference would allow him to do this,
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 demand, and in the mean time the crime might still be committed, and with as much secrecy, that good end would it answer to prohibit such bonds, which, as is allowed by all, may be made use of by a patron 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 resignation, it is only a preteritament during pleasure. Be it so, and I will fuppose, which is the utmost that can be fupposed, that it is not taken with a design to save the incumbent into great care in these times, or that the duty is just the same, but to long avowed or reafion afterwards 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 fuccellor, which may be the cafe, is better qualified for the office, the intereff 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 faid, while human nature continues as it is here, there will be mistakes in judgment, and patrons will be induced through partiality to judge too well the abilities of a relation or friend; but it makes no difference, whether either of these hap, ens when the benefice is at fill void, or at any given time after; or if there be any, it is in favour of the practice, for the michief for so long at least as the first incumbent holds the living, is thereby postponed.

4 Bac. Abr. 474. For more learning on this subject, fee 19 Vin. Abr. & 4 Bac. Abr. tit. Simony.

Simplex, Signifies simple, or fingle; as charta simplex is a deed poll, or fingle deed.

Simple benefice. A minor dignity in a cathedral or collegiate church, a fine-cure, a pension out of a parochial church, is called a benefice; as opposed to a cure of souls, and which therefore was confidered as a benefice, and not his name or confiture of pluralities. Cowell, edit. 1727.

Simple juridic:us. This title was anciently used for any patrie judge, that was not chief in any court. There is a right regiftered, beginning thus, — I John West, a former juftice of the Common Pleas, &c. Ed. 34.

Simplum rum. Are words used in indictions, and declarations of trespass against several persons, when some of them are known, and others not known: as, the plaintiff declares against A. B. the defendant fimplic unum C. D. E. F. and divers others unknown for that they committed certain mischief, &c. Ed. 21. Abr. &c. If a plaintiff or writ is generally against two or more persons, the plaintiff may declare against one of them with a fimplic unum, but if a man bring an original writ against one only, and declares with a fimplic unum, he abates his own action. Cond. 266.

Sine affluent capitali. Is a writ that lies where a dean, bishop, prebendary, abbot, prior, or master of an hospital, altn the land holden in the right of his house, without the comfort of the chapter, consent and fraternity, in which cafe his succeffer shall have this writ. F. N. B. fol. 105.

Sine cura. Is where 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 reside. Dug. Parf. Canon. 315. And when a church is fallen down, and the parish becomes deftitute of parifhioners, it is said to be a Sine cura. Winf. Stat. 153.

Sine cura. Before the year 1839. Before that year, for turning the law into English, when judgment was given against the plaintiff in an action, he was said to be in mefuriducca pro fale damare jux, and for the defendant, eat inde fine dis, and the defendant was discharged. Ed. 220. Lit. 220.

Sine cura. Is a writ of afcription whereby, if all the goods of the defendant, in the chapter, be allowed, that two or more of them may finifh the business. See Arrestation, and F. N. B. fol. 183, &c. and Reg. Orig. fol. 223, 226, &c.

Sinking-fund. Is a provision made by parliament, con- structs, either in the public funds, or to make it possible to the public debts of the nation, and many laws relating to the creation of the sinking-fund, usually one million a year towards raising funds for public service. See See Funds, Debt, Sinking-fund Company.

Skelett. Is that which we now call a hundred. 1st. H. 1. cap. 6. Comitatus in Anglia in centurias & Specifioa ditijquantur.

Sir requeufant, Is a writ that lies for a creditor against his debtor, for money nombred, that hath before the borough in the county-court acknowledged himself to have a debt due to him, and that he does not receive what is due to him, and that he may have due process of law in the same. Cowell, edit. 1727. O. N. B. 62.

Sire, or Sittis, (Situs) The flanding of any place, the division of a capital house or messuage, a territory, or part of a country, as the site of the late dissolved monastery of, &c. 1. the place where it stood. Cowell, edit. 1727.

Sithowmum, Such a gentleman as had the office to lead the men of a town or parish. 1st. In. c. 56. Dugdale, in his Antiquitates of Worciftire, observes, that the hundreds of Knightsbridge, Kinaston, and Hemingford, in 16 in the county of Lincs, were called Lincs of Hemingford, or Sichefs of Hemingford, or Sichefs of Lincs, so that Sithowmum, Sithowmum, Sithowmum, was only the chief officer within such a division, the high curfible of the hundred. Cowell, edit. 1727.


Sithirini, Were servants of the fame name with rod- knights, viz. bound to attend their Lord wherever he went, yet they were accounted among the English-Saxons, as freemen, because they had lands in fee, subject only to furnishing him with one Siche, or Sich. 3d. Lawe, cap. 26. And in the laws of Henry I. cap. 26, Servi, alii cai, alii genituri: Liberii alii Thibhindi, alii Sithrini, alii Thifhiri. See Vindicii hominum.

Siri, In the fabrication of our milled money, the gold or silver is call out of the melting pot into hot flat bars, which bars are drawn thro' a mill, (wrought by a horse or a horse) to produce the just thickness of guineas, crown, &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 aforesaid; after which the sole is folded Sichel, and is molded down again. See Lennard's Essay upon Coins, pag. 96.

Siatralla, or Siatrelfa, Seems to be an engine for catching of fish. It was especially given in charge by the justices in Eyre, that all justices should enquire de bis qui fientemur cum cittiddi & Scatallatia. Coll. 2d. flor. 38. Scatella. It that which we now call a far, or pound. Si offa extrahuntur a capite & Scatella magna leverb. B. Braot. lib. 3. cap. 24.

Siertriftes, (fland or rock). Patent granted to William French, esq. for a light-house there, confirmed, 3 Geo. 2. c. 39.

Skins. None shall take the wool from any sheep-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.

Of sheep skins tawed permitted, 8 El. c. 14.

None but afoian spinners shall dare or export blank coven-kins, 3 flor. 1. c. 9.

Merchants shall not buy coven-kins or merkins in small quantities, 3 flor. 1. c. 9.

Duty on skins imported, 9 Ann. 11. f. 1.

Drawback of two-thirds on exportation, 9 Ann. 11. f. 39.

Additional duty on skins imported, 10 Ann. 26. f. 1.

Drawback
Duties on exportor's oath that hides are marked, 10 Ann. c. 26. f. 5. See Littler.

Slaad, (Sax. Sad.) A long flat piece or flip of ground. 

Slaad, f. (Sax.) A beach, from the long and narrow form of it. 

Slaubert, See Alton.

Slaues, There are no slaves in England, one may be a villain here, but not a slave. 2 Smole. 666.

Slippa, A sanctuary; and there is a tenure of land by holding the 'slippa's. Cawd., edit. 1727.

Slaughter, (mentioned in Pat. 43 Eliz. pag. 11.) A certain rent paid to the caille of Hignacre, and is in lieu of certain days work in harvest, heretofore referred to the Lord from his tenants. Cawd., edit. 1727.

Smalls, Is that of which painters make blue colour. Stad. Socage, 10 Ed. 10 R.
Punishment of papists infiling, 1 Geo. 1. cap. 47. § 2.

Offences against mutiny Acts excepted out of general pardon, 2 Geo. 2. c. 52. § 15.

Foreign protestants may serve as officers or engineers in America, to the number of 50 officers, and 20 engineers, in each company, 2 Geo. 2. c. 5.

For recruiting the army in America, 2 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 implored according to the Act not to be taken out of the service but for some criminal matter, 30 Geo. 2. c. 8. § 2.

Mariners not liable to arrests for but for crimes, or debts of the value of 10 l. 4 Geo. 3. c. 8. § 37.

Soler & Deber. See Deber & Soler.

Soler tenant, (Solus tenens,) Is he or the bill that holds only in his or her own right, without any other joined: For example, If a man and wife hold land for their lives, the remainder to their son, here the man dying, the lord shall not have heir, because he died not sole tenant.

See Kitchen, pet. 134.

Sollicitus, (Sollicitus,) Is a man employed to take care of or follow, suit depending in law or equity, Cowell, edit. 1727. See Attorney.

Solidatum, In the nature gender signifies that absolute right or propriety which a man hath in anything, Cowell, edit. 1727.

Solius tercia, In commune terciae Sancti Martinii fundi, 25 d. dim, quae facient duo solius & dim. Domoflag, in which book, this word is only used in Kent, and no other country. Septem solius terciau funt 15 Carocae. 1 Inf. fol. 15. According to this computation solius tercia is about 160 acres, and 7 solis are about 1120 acres, which is less than 17 carocae, for at the lowest carocae tercia is 100 acres. But my Lord Coke was of opinion, that it did consist of no certain number of acres. This word solius was probably from the Saxon, Solu, a plough, but what quantity of land this solis, fellow, or felling, or felling did contain, is not so easily determined. It seems to have been the name with a plough-land; so that in Domoflag book, Se defendant pro uno solis, is, it is taxed for one carocate or plough-land. Cowell, edit. 1727.

Soler or Solar, (Solarium) A chamber or upper room. Id. ib.

Solvendo elle, Is a term of art, signifying that a man hath where to pay, or, as we say, it is a personsol. Cowell, edit. 1727.

Solut ad diem, Is a plea in action on debt on a bond, bill, &c. that the money was paid at the day limited. Mod. Cas. 22. To a bond of 30 years standing the defendant pleaded solut 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.

Solutions, In militia parlament, and Solutions from Burgage. Parliament, Are writs whereby the free tenants and burgagees 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 factory, how preferred, 1 Jac. 1. c. 23. See Fifth.

Son assurance, Is a justification in an action of assam and battery; because the plaintiff made the first assam, and what the defendant did was in his own defence. 2 Lit. Abr. 532. See Assam and Battery.

Sotage, Was according to Stow, pag. 284. A tax of forty shillings laid upon every knight's see.

Southerne company, Of coverts of low-imported, pays 10l. by Stat. 2 H. 4. c. 1st, 2d, cap. 4. § 47. And every pound 2d. 10 Ann. cap. 19. § 1. And a tax, 12 Ann. § 17. 2. c. 3. And a penny, 12 Ann. § 17. 2. c. 19. § 1.

Whites not to be exported, 2 V. 2 Ed. 6. c. 26.

The duty laid on foape, 10 Ann. c. 19. made perpetual and part of general fund, 3 Geo. 1. c. 7. 12 Ann. § 2. c. 9.

Drawback on foape used in the wooden manufactures, 10 Ann. c. 19. f. 29. 12 Ann. § 2. c. 9. f. 16.

Tax on foape containing 225 pounds, every fifty six pounds, befides the rate of the cafe, 10 Ann. cap. 39. § 8.

Penalty for swearing false, 10 Ann. c. 19. f. 31. 12 Ann. § 2. c. 9. f. 18.

Cake foape need not be balled, 10 Ann. cap. 26. § 11.

Duties laid by 12 Ann. § 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 foape, 1 Geo. 1. c. 36. f. 14.

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.

Sophia, (Princes,) Naturalized, 4 Geo. 1. c. 1 & 4.

See Bing.

Society. See Conspirat, Witchcraft.

Soile, In sums of money lent upon usury, the principal was called fort, as distinguished from the intereft. Pryn. Collats. tom. p. 161.

Sous accipitur, A for or how far. King John granted to Robert de Hyde, land in Berme of the honour of Montagu, for the length coming. Per foritium accipitris foro reddenda funguli anni — Cerfrians, 8. Edmundi, MS. fol. 173.

Suthale, Mistleton without doubt for Sutale, Cowell, edit. 1727.

Suthfeg, Is an old word, which signifies: History: From the Sax. Sud, um, and saga, folinnum; for all authorities should be true, or true fayings; from hence we derive our English word suthlayer. Cowell, edit. 1727.

Sovereign, A piece of gold current at twenty-two shillings six-pence 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 fourpence. In 34 Hen. 8, they coined fourpence at twenty shillings a-piece, and half fourpence at ten shillings. In 4 Edu. 6, Sovereign of gold at twenty-four shillings a-piece. In 6 Edu. 6, Sovereign at thirty shillings. So in 2 Eliz.

Sutherland, Its charter confirmed, 6 Geo. 1. c. 154. For improving the waterworks there, 20 Geo. 2. c. 15. See Harbours.

South-Sea Annuities. See South-Sea Company.

South-Sea Bonds, Stealing them made felony, 2 Geo. 2. c. 25. fel. 3.

South-Sea Company, Establishment of the South-Sea company and their fund, 9 Ann. c. 21. 3 Geo. 1. c. 9.

Their stock exempt from taxes, 9 Ann. c. 21. f. 38. Company to have the places they shall please, and the prizes taken, 9 Ann. c. 21. f. 50. 51.

Commanders of ships to obey company's instructions, 9 Ann. c. 21. f. 119.

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. c. 21. f. 58.

Their ships to pay and reproaches through the fireights of the pelagic, 9 Ann. c. 21. f. 58.

Their stock for the fishery, 9 Ann. c. 21. f. 59.

The same persons not to be directors of this company and of the Bank of India company, 9 Ann. c. 21. f. 61.

Treasurer of the navy, &c. may mortgage South-Sea stock for the publick use, 10 Ann. c. 19. f. 185.

The company's property now exchanging the redemption of their fund, 10 Ann. c. 30. Etablissement 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. c. 4. f. 47. 66.
Annuities of 600,000 l. reduced to 500,000 l. 3 Geo. 1. c. 9. f. 15.

Lottery annuities subscribed into the South-Sea stock, 3 Geo. 1. c. 10. f. 16.

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 proving the frauds of the South-Sea directors, Etc. 7 Geo. 1. c. 2. and 28. 8 Geo. 1. c. 22. 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. 25. 7 Geo. 1. fl. 2. 8 Geo. 1. c. 22. 9 Geo. 1. c. 21. 9 Geo. 1. c. 10.

Treasury to rectify certain mistakes in South-Sea books, 8 Geo. 1. c. 22. f. 2.

Creation of the old South-Sea annuities, 9 Geo. 1. cap. 6. f. 3.

Liberty for the South-Sea company to ship negroes at Madagascar, 13 Geo. 1. c. 18.

Redemptions of South-Sea stock, 1 Geo. 2. fl. 2. c. 5. f. 19. 3 Geo. 2. c. 16. f. 4. 5 Geo. 2. c. 17.

Directions for trustees, 3 Geo. 2. c. 16. f. 8.

Quarterly deficiencies to be made good out of the aggregate fund, 2 Geo. 2. c. 27. f. 31.

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.

Restrained from issuing bonds without a general court, 6 Geo. 2. c. 28. f. 28. 7 Geo. 2. c. 17.

Fund for their annuity supplied, 2 Geo. 2. c. 5. 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 embellishing their effects made felons, 24 Geo. 2. c. 11. f. 30.

The first and second subscription South-Sea annuities to be consolidated, 25 Geo. 2. c. 27. f. 26.

The number of directors reduced to 21, 25 Geo. 2. c. 16.

The King may be governor of the South-Sea company, 1 Geo. 3. c. 5.

Southwark. The inhabitants of the town 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. Indeed thereof a market to be placed in a place called the Triangle. 28 Geo. 2. c. 31.

Soutlgrove, An old name of the month February, so called by the inhabitants of South Wales.

Sauce, Is a word corrupted from the French souce, n. 1, remembered; for the flat. 4 Hen. 5. cap. 7. in the original French hath Des oisvret, sans souce, by which turning the two wo into tis, was first made fesen, and such oisvret and caulis as are not to be remembered, run not in demand, that is, are not leviabile: It is a word of art used in the Exchequer, where oisvret that sauce not, are such as the thievish by his industry cannot get, and oisvret that sauce, are such as he cannot get. 5 Spigurnel. 6. f. 157.

Spadiarius, (For Spavarius.) A sword-bearer. Cowell, edit. 1727.

Spate, or plaine, Pleas of the wold, or a court martial, for the freely execution of justice on military dependents, 15 Edw.

Spatactu, A bled amongst the holy garments in the tabernacle, 3 tem. pag. 331. visa. Cum alio, antils, fiata, famae, salutaris, & maritaria, &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 assembly consists of two houses, 4 Geo. 2. c. 29. there 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 ordering the orders of each house observed, &c. See Parliament.

Speciality, (Specialitas,) A bond, bill, or such like instrument; a writing or deed under the hand and seal of the party. See 10 Vin. Ab. 487.

Spectral Matter in Subden. See General Mute, and Bros. 1st. General office and special evidences.

Spectus The cell of a monk, mentioned in Malbou, lib. 3.

Spicrs, For garnering spicrs 1 Yat. c. 19. Repealed, 6 Ann. c. 16.

Duty on spicers impaired, 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 whereas of the mater 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 spices, raisins 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 Rock. Long to be a chargeable with the further new duty of 11, 6d. by 8 Ann. 7. c. 9. Ann. 8. c. 6. f. 59.

Dirt in pepper, &c. to be destroyed, 10 Ann. c. 26. f. 45.

Licences to import spices shall specify the quantity and place of landing, 6 Geo. 1. c. 21. f. 45.

Spices packed in small parcels forfeited, 6 Geo. 1. cap. 21. f. 47.

Duties on spices aforesaid, 8 Geo. 1. c. 15. 52. 17. 18.

Licence to import spices shall be deliver'd up at entering the ship, 2 Ann. 11. f. 21. See Customs, Funds, &c.\n
Speigurnel. Calvıdır Spigurnel was by King Henry the Third appointed to be fealer of his writs, and perhaps the first in that office. Therefore in after-times the persons that enjoyed that office were called Spigurneli. Pot. 11 Hen. 3. m. 7. & Gwiff. 4 Edw. 1. d. mo. 6. "Johannes Bous Mitis, filius dominî Fransiæ Bous, &c. Jâhannâ war ejjelemd Jâhannâ comedâne at Roy ferssemâne of us ipius capellâ Regis, & officium Spigurnellorun de ipuis frettâm; qua de Rege tenent in capitâ. Memo-rand. in Seccar. Mich. 14 Edw. 1. by Sir Jefun Manusra.

Spintarium, Is that fort of vessel which we now call a pinnae; It is mentioned by Knighton, anno 1338, Redi-urum Normannon cum galis 12 & cum alie spicinis cum manie huse armate.

Spintulari, Were those three golden pins which were used about the pall; and from thence spindularis signified to be adorned with the archippiscopal pall. Du Prêne.

Spinter. It is the addition usually given to all unmarried women, from the vifcount's daughter downward. Yet Sir Edward Coke says, Genera is a good addition for a gentlewoman, and that if they be named spintar, in any other case, unless it be a title, or a mark, they may abate and quell the name. 2 Inf. fol. 668.

Spiritualities of a Bishop. (Spiritualia Episcop.) Are those profits which he receives as a Bishop, not as a Baron of the Parliament. Staund. Pl. Car. fol. 132. Such are the duties of his vocation, his benefit growing from order. And the government, or predication-money, that is, fullness of charitable use, which upon reasonable cause he may require of his clergy. "Johannes Gregor. de Benefice, cap. 6. num. 9. and the benefit of his jurisdiction. "Joachimus Stephanius de Jurisdict. lib. 4. cap. 14. num. 14. See Codos of the Spiritualities.

Spiritus-houfe. Mentioned in the advowson subfeiles, 15 Cor. 2. cap. 9. Is a corruption from hospital, and signifies the hospital, or it may be taken from the Teutonic spirale, which denotes an hospital or alms house. Cowell, edit. 1727.
S T A
Espitation. (Spesitate) Is a writ that his force is in-
cument 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 rectory,
and a patron present another to the church, who is
influenced and induced. The bishop shall have
against this incumement a writ of Espitation in Court chri-
Spenet aliata. A free gift and present to the King
was also called to. Cowell, edit. 1727.
Spatulai. Signify gifts, gratuities, libations. Ut nec
ejusmodi nec alius pro justitia fascinationi Spatulai contra-
tales (i.e. forbidden) occipiat. From hence St. Cyprian
(Epist. 70, 71, 92.) calls those clergymen Spatularior
fratres who received such gifts for their maintenance,
which afterwards were called Parochi. Cowell, edit.
1727.
Spatulas. The brothering of a man or woman before
marriage. See Cucuculas.
Spatula-breath. Adultery, or incontinence, opposed
to simple formation, A. D. 1542. The Lady Kathar-
ine was accused to the King of misconduct living, not
only before her marriage, but also of Spatula-breath after
her marriage. Fox Hist. Am. vol. 2. pag. 520. b.
Spuiters of yarn. Are tiers of yarn, to see if it be
well spun, and fit for the boom. June 1 Mar. Par. 1.
cap. 7. Spurters are those that work at the flite, i.e.
Roma germinatia nuerata, qua filia retende congestur-
atur, i.e. Dr. Skinner.
Spurnoyal, (Spurnatium aurum) An ancient gold
Squallly, (mentioned in flat. 43 Eliz. cap. 10.) Is
a note of faultiness in the making of cloth. See Newep.
Squibs. Prohibited and declared publick mutincies, 9
& 10 H. 3. c. 7.
Stabbing of persons is made felony without benefit
of clergy, and punished as murder, by Stat. 1 1 Bos. 1. c. 8.
See Mauhlaughe.
Stabula. It was a custom in Normandy, that where
a man in power claimed lands in the possession of an in-
fantry, he petitioned the Prince that it might be put into
his hands till the right was decided; and then he had a
right which was called beto de stabilia. To this a char-
ter of Henry the first seems to allude, in Pryn, lib. Angi.
1 tom. pag. 1204, vis. Et omnes decimas ventatius pra-
dictisfarilberum excepta decima illa venantius quae
captes facit cum Stabilia in foro de Wundilbee. Cowell,
edit. 1727.
Stabulio venantius. The driving deer to a fand,
which is also called driving the wendalij. Cowell, edit.
1727.
Stable-stone, (Stabialis stoea, or rather flan in flabulj)
Is listed in the four evidences or presumptions whereby a
man is considered, to intend the inhabiting the King's deer
in the forest. Monaun. part 2. cap. 9. num. 9. The
other three are dyeg-dreus, back-hear, and back-blynd. This
stable-stone, is where a man is found in stabile flaminse, at
his flaning in the forest with a crost-bow, of low bow
bent, ready to shoot at any deer, or else flaning close to
a tree with grey-bounds in a sally, ready to flip.
Cowell. edit. 1727.
Stadium, is in Domesday book accounted for a forling
of land, which is the eighth part of a mile. Id. ib.
Staff-riding, Is a right to follow cattle within a
forest. 1 Stat. 28. 282.
STA
Stage-coaches. See Coaches.
Stage-plots. See Drama.
Stagiarini, A canon referredinry in a cathedral
church, Stagiarini, the reference to which was abridged;
Stagiarini, to keep such reference. As in a statute
made in the chapter of Paul's, 2 Ed. July. ans. 1349. They
commonly put this distinction between referendarii and
referatarii; every canon infall'd the privileges and
profits of reference was referatarii, and while he ac-
cepted such a flatted reference, he was splugator, or
Referatarius. The word Stagiai was likewise used for
reference, as Stagianarii subgraion Stagiam flam in dom-
ilus ecclesiae vicinis inclus, Éc. 16. fol. 44. a.
Stagires, (Stagina) Ponds, pools, or flanding waters,
mentioned in 5 Eliz. cap. 21.
Stalk-bast, A kind of fliber's bast. Stat. 27 Eliz.
cap. 21.
Stalliers. The going gently step by step to take game.
None shall flalk with bulk or beard to any deer, except
in his own forrest or park, under the penalty of 10. fl.
19 Hen. 7, c. 11.
Stallilage, (Stagilium, from the Lat. Stag. i.e. flab-
ula, flantes,) The liberty or right of pitching or erect-
ing flals in fair or market, or the money paid for the
same. Cowell. edit. 1727. See Bever's Statuary.
Stallarians. It is mentioned by our histrienes, and fig-
ifies effeulus; the same officer whom we now call ma-
s. of the horbe. Sometimes it hath been used for
him who hath a flall 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-
cluded by 5 Ann. c. 19. and made perpetual and part of
the aggregate fund by 1 Geo. 1. c. 12. The second flamp-
duty, 9 & 10 W. 3. c. 25. A third, 12 Ann. c. 2. c. 9.
Another, 12 Geo. 1. c. 33. 23 Geo. 2. c. 35.
Another, 30 Geo. 2. c. 19. Another, 32 Geo. 2. c. 35.
Another, 2 Geo. 3. c. 36. Exkreptions from the flamp-duty,
and the penalty leften, 6 & 7 W. 3. c. 12.
Provisions to prevent frauds in the flamps, 1 Ann. P.
2. c. 22.
Admissions of freemen before 1 Dec. 1705, without
flamps, made good, 4 Ann. c. 12. f. 8.
Warrants not to incur any penalty of the flamp-en-
dexes for default of the other party, 5 Ann. c. 19. f. 39.
Warrants of the chief justices in Eyer exempted from
All of publick mutiny. See Notarial Act.

<table>
<thead>
<tr>
<th>Act</th>
<th>Statutes</th>
<th>Year</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>5 W. &amp; M. c. 21</td>
<td>1727</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>5 W. &amp; M. c. 21</td>
<td>1727</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>5 W. &amp; M. c. 21</td>
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<td>5 W. &amp; M. c. 21</td>
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<td>5 W. &amp; M. c. 21</td>
<td>1727</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>5 W. &amp; M. c. 21</td>
<td>1727</td>
<td>3</td>
</tr>
<tr>
<td>8</td>
<td>5 W. &amp; M. c. 21</td>
<td>1727</td>
<td>3</td>
</tr>
<tr>
<td>9</td>
<td>5 W. &amp; M. c. 21</td>
<td>1727</td>
<td>3</td>
</tr>
<tr>
<td>10</td>
<td>5 W. &amp; M. c. 21</td>
<td>1727</td>
<td>3</td>
</tr>
</tbody>
</table>

Warrant
Warrant, mention, or personal decree

And

Libel, allegation, deposition, answer, sentence, or final decree

And

Adluxion into a corporation, or company

Into an inn of court, or Chancery, or matriculation

And

And into inn 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

Admissitance to a copyold affair. See Copyhold.

Advertisement in weekly papers

And

Printer not paying the duty in time, forfeits treble sum

Advertisement in periodical pamphlets, published at a greater interval than a week, pays

Affidavit, and copies thereof, pay

And

Affidavit of plaintiff's cause of action pays as other affidavits

Exceptions in favour of affidavits concerning burying in woollen, 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 s. 3. 9 & 10 H. 3 c. 25 s. 38. 32 Geo. 2 c. 35 s. 2. And those made for the allowance of duties on fops used in the woollen manufacture, 10 Ann. c. 19 s. 29. 32. 12 Ann. 2 c. 9 s. 16. 17.

What payable for affidavits of performance of quarantine, 9 Ann. c. 2 s. 6. 7.

Air licence. See Licence.

Admission in the spiritual, or admiralty-court, and copy thereof, pays

Almanack for one year printed on one side of paper, pays

And

Other almanacks for one year, pay

And

Those for more years pay for three years, 9 Ann. c. 23 s. 23 & 53. and the additional duty for every year,

1 Geo. 2 c. 19 s. 4.

What book to be deemed an almanack, 10 Ann. c. 19 s. 175.

One sheet only needs to be flapped, 9 Ann. c. 23 s. 26.

Provides in favour of almanacks in bibles and common prayer books, and saving the rights of proprietors of almanacks, 9 Ann. c. 25 s. 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 s. 38.

Airway in court of equity pays

And

Copy thereof

And

Appeal from the court of admiralty, arches, or prerogative court of

Cauterbury or York, pays

And

And each appeal, and every appeal from the admiralty of Scotland, pays

For Writs of Appeal. See Writ.

Appearance on special bail pays

And

On common bail, or without bail

And

Penalty for not entering or filing an appearance within time limited by the statutes 5 H. & M. c. 21 s. 3. 9 & 10 H. 2 c. 25 s. 33.

Apprentices, matters paid £ d. in the pound for 50l. or under, and one shilling for more, 8 Ann. c. 9 s. 32.

On pain of 50l. 9 Ann. c. 21 s. 66. And double the duty, 18 Geo. 2 c. 23 s. 24.

The time of payment enlarged by several statutes, 9 Ann. c. 21 s. 65. 12 Ann. 2 c. 9 s. 31. 6 Geo 1. c. 11 s. 37. 5 Geo. 1. c. 20 s. 20. 9 Geo. 1. c. 2 s. 38. 11 Geo 1. c. 8 s. 34. 18 Geo. 2 c. 22. 23 Geo. 2 c. 16 s. 5. 28 Geo. 2. c. 10 s. 4.

Things given with apprentices, not being money, not to be valued, 8 Ann. c. 9 s. 45.

The indenture to bear date when executed, and to specify the sum given, on pain of double the sum, 8 Ann. c. 9 s. 35.

And of the apprentice's being disabled from following his trade, &c. 8 Ann. c. 9 s. 39.

And of the indenture's being no evidence, 8 Ann. c. 9 s. 43.

Within what time to pay, £ d. in the pound for 50l. or under, and one shilling for more, 8 Ann. c. 9 s. 35. 32. 38.

Penalties on non-payment of apprenticeship duties to be discharged on payment of double duties, 20 Geo. 2 c. 45 s. 5.

Encumbrance to apprentices paying the duty in the master's default, 18 Geo. 2 c. 22 s. 25. 20 Geo. 2 c. 45 s. 5.

Vol. II. No. 127.

8 H

Provision:
<table>
<thead>
<tr>
<th><strong>Provisions in favour of indentures for binding poor children apprentices</strong></th>
<th><strong>Provision</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter of attorney pays</td>
<td>0 0 6 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 5 &amp; 10 W. 3. c. 25. f. 37.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 12 Ann. f. 2. c. 9. f. 21.</td>
</tr>
<tr>
<td>Bill. See appearance.</td>
<td>0 1 0 30 Geo. 2. c. 9. f. 1.</td>
</tr>
<tr>
<td>Bail bond may be affixed, but not fixed before it is flamped,</td>
<td>4 Ann. c. 16. f. 20.</td>
</tr>
<tr>
<td>Bank securities exempt from flamp duties,</td>
<td>2 Geo. 1. c. 8. f. 39.</td>
</tr>
<tr>
<td>Barrister. See Degrees.</td>
<td></td>
</tr>
<tr>
<td>Batchelor of arts not chargeable with the duty of 40s.</td>
<td>6 &amp; 7 W. 3. c. 12. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 5 10 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>Bill in Equity pays</td>
<td>0 0 6 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>Copy</td>
<td>0 0 1 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 1 5 &amp; 10 W. 3. c. 25. f. 40.</td>
</tr>
<tr>
<td>Bill of Exchange, or of fees, or parcels, &amp;c. pay nothing</td>
<td>5 W. &amp; M. c. 21. f. 5.</td>
</tr>
<tr>
<td>Bill of landing pays</td>
<td>0 0 4 9 Ann. c. 23. f. 23.</td>
</tr>
<tr>
<td>Bill of Middlesex. See Writ.</td>
<td></td>
</tr>
<tr>
<td>Bond pays</td>
<td>0 0 6 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 5 &amp; 10 W. 3. c. 25. f. 37.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 12 Ann. f. 2. c. 9. f. 21.</td>
</tr>
<tr>
<td>And</td>
<td>0 1 0 30 Geo. 2. c. 35. f. 8.</td>
</tr>
<tr>
<td>Brief for collecting charity, pays the single duty of forty shillings</td>
<td>2 0 0 9 &amp; 10 W. 3. c. 25. f. 43.</td>
</tr>
<tr>
<td>Copies. See Writ.</td>
<td></td>
</tr>
<tr>
<td>Cards per pack, pay</td>
<td>0 0 6 9 Ann. c. 23. f. 39.</td>
</tr>
<tr>
<td>And</td>
<td>0 2 0 29 Geo. 2. c. 13. f. 1.</td>
</tr>
<tr>
<td>Certificate on degree. See De,rects.</td>
<td></td>
</tr>
<tr>
<td>Certificate on marriage, pays</td>
<td>0 0 5 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 8 9 &amp; 10 W. 3. c. 25. f. 53.</td>
</tr>
<tr>
<td>Proviso in favour of seamen's widows, 6 &amp; 7 W. 3. c. 12. f. 3.</td>
<td></td>
</tr>
<tr>
<td>Certificates for drawbacks, pay</td>
<td>0 0 6 9 Ann. c. 23. f. 23.</td>
</tr>
<tr>
<td>Proviso in favour of certificates concerning soap used in woolen works, 10 Ann. c. 10. f. 39.</td>
<td></td>
</tr>
<tr>
<td>Certificates for performance of quarentine, what to pay, 9 Ann. c. 2. f. 7.</td>
<td></td>
</tr>
<tr>
<td>Court, in England, pays</td>
<td>0 0 6 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 5 &amp; 10 W. 3. c. 25. f. 27.</td>
</tr>
<tr>
<td>And in Great Britain</td>
<td>0 0 6 12 Ann. f. 2. c. 9. f. 21.</td>
</tr>
<tr>
<td>Copy ports. See Admiralty.</td>
<td></td>
</tr>
<tr>
<td>Circuit pardon pays</td>
<td>0 0 2 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 8 9 &amp; 10 W. 3. c. 25. f. 37.</td>
</tr>
<tr>
<td>Citation in ecclesiastical courts, pays</td>
<td>0 0 6 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 5 &amp; 10 W. 3. c. 25. f. 27.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 12 Ann. f. 2. c. 9. f. 21.</td>
</tr>
<tr>
<td>Copy thereof</td>
<td>0 0 8 9 Ann. c. 23. f. 23.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 9 &amp; 10 W. 3. c. 25. f. 36.</td>
</tr>
<tr>
<td>Clerks assistant. See Admiralty.</td>
<td></td>
</tr>
<tr>
<td>Clerks indentures, are liable to the same duties as apprentices indentures, for which see Apprentices.</td>
<td></td>
</tr>
<tr>
<td>Cogitation of heirs in Scotland, pays</td>
<td>0 0 2 10 Ann. c. 19. f. 100.</td>
</tr>
<tr>
<td>Collation. See Presentation.</td>
<td></td>
</tr>
<tr>
<td>Commission ecclesiastical not otherwise charged, pays</td>
<td>0 0 6 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 5 &amp; 10 W. 3. c. 25. f. 23.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 12 Ann. f. 2. c. 9. f. 21.</td>
</tr>
<tr>
<td>Commission of rebellion do not pay as letters patent</td>
<td>0 0 2 10 Ann. c. 19. f. 100.</td>
</tr>
<tr>
<td>Common Recovery. See Writ.</td>
<td></td>
</tr>
<tr>
<td>Contrafl or other obligatory instrument, pays</td>
<td>0 0 6 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 5 &amp; 10 W. 3. c. 25. f. 37.</td>
</tr>
<tr>
<td>And if a deed</td>
<td>0 0 6 5 W. &amp; M. c. 21. f. 3.</td>
</tr>
<tr>
<td>Copy of a record or other proceedings at Writ, pays</td>
<td>0 0 6 5 &amp; 10 W. 3. c. 25. f. 35.</td>
</tr>
<tr>
<td>And</td>
<td>0 0 6 12 Ann. f. 2. c. 9. f. 21.</td>
</tr>
<tr>
<td>Of a will</td>
<td>0 0 6 9 &amp; 10 W. 3. c. 15. f. 41.</td>
</tr>
<tr>
<td>Copyhold farrenders, or copies, are neither within 5 W. &amp; M. nor 9 &amp; 10 W. 3. 6 &amp; 7 W. 3. c. 12. f. 2. 9 &amp; 10 W. 3. c. 25. f. 45.</td>
<td>0 0 2 10 Ann. c. 19. f. 100.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Notes:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>But each farrender, copies and absences except to the use of a will, or to a custom right or tenant right eate, pay</td>
</tr>
</tbody>
</table>

[Note: The text contains legal terminology and references. For a comprehensive understanding, it is recommended to consult legal texts or a legal professional.]
Grant under the Great Seal, Exchequer, duchy county palatine, 
or privy seal, of lands in fee, or for years, or other grants of 
profits not particularly charged.

And

Helion Corpus. See Will.

Indentures. See Deeds and Appraisements.

Institution pays

And

And

Institution, or licence by the prebendaries in Scotland

Interrogatories in equity

And

Copy

And

Inventory exhibited in ecclesiastical, admiralty, or circuit courts

And

Copy thereof

And

Judgment signed in any court at Westminster

And

Calendar. See Almanack.

Loan Bill

Litigation

And

Lady. See Deed.

Letters patent, letters of attorney and administration. See Brief, County Palatine, Grant, Administration, Attorney.

Lettcrs of mort

And

And

Liability and copy thereof pays

And

Licence by an ecclesiastical court, or ordinary

And

By the Prebendaries in Scotland, except to tutors and schoolmasters

Licence of marriage exempt from the duties granted by 9 & 10 W. 3. c. 59. for marriage

Without licence, or banns in England, 7 & 8 W. 3. c. 35. f. 12. 3. 10 Ann. c. 19. f. 176, 177, 178.

Or for being to married, 7 & 8 W. 3. c. 35. f. 4.

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 spiritsuous liquors is taken out

For retailing ale, &c.

Penalties for performing recognizances of fillers of ale without first sealing them in counterfeit manner to be made out,

6 Geo. I. c. 21. f. 56.

Licences for keeping alehouses on the military roads in Scotland, excepted, 29 Geo. 2. c. 12. f. 19.

Mandate. See Will.

Marriage licence or certificate. See Licence Certificate.

Marital court. See Proofs.

Matriculation

And

Matrimonial, or personal decree in the admiralty, or circuit courts. See Admistraty.

Mention, or citation in the ecclesiastical courts, and copies of them

And

And

Newspapers. See Pamphlets.

Netherlands. See Psalter.

Natural aid

And

NewItem in Scotland

Offers at tea pay the same as those at land, 6 & 7 W. 3. c. 12. f. 6. 9 & 10 W. 3. c. 25. f. 36.

Orders. See Royal.

Original writs. See Will.

Original instruments of surrender, or renunciation of heritable

rights; original return of service of heirs, original patent; original

instruments of surrender, or renunciation; service or cogni-

tion of heirs in Scotland, pay

Papal. See County.

Pamphlets, and new papers of half a fleet or lea, pay

Larger than half, not exceeding one half, pay

And

Larger than one fleet and not exceeding six in octavo, or twelve in quarto, or twenty in folio, pay 2s, for every


Charges showing how and under what penalties such papers are to be stamped before they are printed, 10 Ann.


And printed copies to be brought to the office and entered, 12 Ann. c. 19. f. 111.
S T A

Title: Statute.

Sign manual to any beneficial warrant or order, except warrants or orders for the service of the navy, army, ordinance, pay

South Sea securities, except from duties, 3 Geo. 1. c. 9. f. 16. 5 Geo. 1. c. 19. f. 30. 6 Geo. 1. c. 4. f. 51.

Statute, Boyle merchant or recognition, pay

Surrender of grant, or office, inrolled, pays

Surrender of Copyholds. See Copyholds.

Surrender of hertitable rights in Scotland, pays

Transfer of stock

Warrant from justices of peace pays nothing, 6 & 7 W. 3. c. 12. f. 9. 9 & 10 W. 3. c. 25. f. 45.

Writ of habeas corpus, pays

Writ of Certiorari, pays

Writ of Appeal, except to the delegates, pays

Writ of Covenant for levying a fine, pays

Writ of entry for fulfilling a common recovery, pays

Writ of Error, pays

Every other writ original, except such on which a copy is issue, subpoena, bill of Middelsex, latitute, capias, quo warranto, recognizance, and every other writ, process or mandate of courts holding plea of 40 l. pays

Writs of Covenant, writs of Entry, and writs of habeas corpus excepted, 32 Geo. 2. c. 25. f. 7.

2. Clauses concerning the officers for the management of the flump duties.

Such officers how to be sworn, 5 W. & M. c. 21. f. 12. 9 & 10 W. 3. c. 25. f. 60. 61. 8 Ann. c. 9. f. 42. 9 Ann. c. 23. f. 29. 10 Ann. c. 19. f. 16. 12 Ann. f. 26. f. 75. 12 Geo. 1. c. 23. f. 9.

And how to account, 5 W. & M. f. 21. f. 24.

What commissioners are to levy the duties granted by the several statutes, 5 W. & M. c. 21. f. 7. 9 & 10 W. 3. c. 25. f. 48. 9 Ann. c. 73. f. 48. 10 Ann. c. 19. f. 103. 124. & f. 26. f. 77. 12 Ann. f. 21. c. 23. f. 20. 12 Geo. 1. c. 33. f. 4. 30 Geo. 2. c. 16. f. 17. 10 W. 3. c. 25. f. 68. 9 Ann. c. 23. f. 36. 10 Ann. c. 19. f. 117.

And to stamp vellum, &c. without fee or payment of the duties, 5 W. & M. c. 21. f. 9. 9 & 10 W. 3. cap. 25. f. 59.

And what allowance to make for prompt payment, 6 & 7 W. 3. c. 12. f. 9. 1 Ann. f. 22. f. 7. 9 Ann. c. 23. f. 36. 10 Ann. c. 19. f. 117. 12 Ann. f. 21. c. 9. f. 27. 12 Geo. 1. c. 33. f. 6.

Judges to make orders at the request of the commissioners for the better securing the duties, 5 W. & M. c. 21. f. 12. 9 & 10 W. 3. c. 26. f. 60.

Such commissioners with a comptroller continued for ever, 9 & 10 W. 3. c. 44. f. 43. 9 Ann. cap. 21. f. 15.

Inspectors in courts and offices, 5 W. & M. cap. 21. f. 12. 9 & 10 W. 3. c. 25. f. 60.

And other inferior officers to be appointed by the commissioners, 5 W. & M. cap. 21. f. 7. 9 & 10 W. 3. c. 25. f. 48. 8 Ann. c. 9. f. 33.

Penalties on persons hindering such inspectors from inspecting books which may discover frauds, 9 Ann. cap. 23. f. 28.

And on collectors detaining and misappropriating monies in their hand, 9 & 10 W. 3. c. 44. f. 45. 9 Ann. cap. 21. f. 14.

And on commissioners not duly paying monies into the Exchequer, 9 & 10 W. 3. c. 44. f. 42.

And on officers flamping vellum, &c. before the duty is paid, 5 W. & M. c. 21. f. 10.
STA

Salaries of the officers how to be paid out of the duties, 5 W. & M. c. 21. § 21. 9 & 10 W. 3. c. 25. § 66. 8 Ann. c. 9. § 33. 12 Geo. 1. c. 33. § 5.

3. General clauses relating to and inferring the payment of duty.

Stamps how to be provided and altered from time to time, 5 W. & M. c. 21. § 7. 8 Ann. c. 9. § 26. Suits of paupers excepted from duties, 5 W. & M. c. 21. § 14. 12 Geo. 1. c. 23. § 5.

probate of wills of feamen and soldiers excepted, 5 W. & M. c. 21. § 17. And the alteration how to be proclaimed, 5 W. & M. c. 21. § 7. 9 & 10 W. 3. c. 25. § 57. 9 Ann. c. 23. § 33. 10 Ann. c. 19. § 110.

And the proclamation judicially taken notice of by the judges, 10 Ann. c. 19. § 146.

Duties how to be paid, 5 W. & M. c. 21. § 11. 9 & 10 W. 3. c. 25. § 49. 8 Ann. c. 9. § 36. 9 Ann. c. 23. § 25.

And how on the alteration of the stamp, the parties that have velum, &c. marked with the old stamp, are to be supplied with velum, &c. stamped with a new stamp, without any duty, 5 W. & M. c. 21. § 16. 9 & 10 W. 3. c. 25. § 65. 9 Ann. c. 23. § 34. 10 Ann. c. 19. § 109.

12 Geo. 1. c. 33. § 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. § 11. 9 & 10 W. 3. c. 25. § 59. 9 Ann. c. 23. § 17. 10 Ann. c. 26. § 111. 12 Geo. 2. c. 2. § 9. 12 Geo. 1. c. 33. § 8.

Or writing a new instrument, &c. on stamp paper, &c. where 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. 22. § 2.

Or on putting some part of the writing charged with duty in another as near the stamp as may be, 1 Ann. b. 2. c. 22. § 5.

And on officers neglecting to enter or file actions, plaints, bail, appearances, admissions, or other proceedings, 1 Ann. b. 2. c. 22. § 1. 5 Ann. c. 19. § 29.

Penalty of 5l. for selling unstamped cards or dice, or altering stamps, 1 Ann. c. 19. § 162.

Penalty on defacing the stamp on cards, and new playing dice, 6 Geo. 1. c. 21. § 55.

Penalty on not making out all licences duly stamped, 6 Geo. 1. c. 21. § 56. 29 Geo. 2. c. 2. § 12.

Penalties in the stamp acts to relate to subsequent duties, 1 Ann. b. 2. c. 22. § 5.

The day of found out a writ shall be indexed on the warrant, 6 Geo. 1. c. 21. § 54.

Penalty on making insufficiency without stamps, 11 Geo. 1. c. 30. § 44.

Hawkers of unstamped news papers to be sent to the house of correction, 10 Geo. 2. c. 26. § 5.

Penalties how disposed of, 1 Ann. b. 2. c. 22. § 6. 9 Ann. c. 23. § 37. 10 Ann. c. 19. § 119.

How to be mitigated by justices of peace, 10 Ann. c. 19. § 120. 173.

Proceedings before such justices not to be superseded by any order in chancery, 10 Ann. c. 19. § 174.

Provided in favour of paupers, 5 W. & M. c. 21. § 14. 9 & 10 W. 3. c. 25. § 63. 12 Geo. 1. c. 33. § 7.

And of those that write things without stamp on a book or roll licenced by the commissioners, 1 Ann. b. 2. c. 22. § 4.

Counterfeiting stamps or procuring paper to be marked with counterfeit stamps, &c. where it belongs, 5 W. & M. c. 21. § 11. 9 & 10 W. 3. c. 25. § 59. 8 Geo. c. 9. § 41. 9 Ann. c. 25. § 34. 10 Ann. c. 10. § 115. 6 Geo. 1. c. 21. § 62. 29 Geo. 2. c. 12. § 21. c. 13. § 50. 30 Geo. 2. c. 19. § 27. 32 Geo. 2. c. 35. § 17.

Stamp duties not to extend to licences by commissioners of excise, 29 Geo. 2. c. 12. § 25.

4. Clauses for the security of those who advanced money on the credit of the stamp duties.


And pulled annually, 1 Ann. b. 2. c. 21. § 28. And the registers kept upon the parties chargeable therewith, 1 Ann. b. 2. c. 22. § 9.

But not on any person not duly charged, on pain of treble damages, 1 Ann. b. 2. c. 22. § 11.

The first print of paper and seal, &c. to be stamped on the foot of the account, 1 Ann. b. 2. c. 22. § 10.

Clauses concerning the continuance of stamp duties, 9 & 10 W. 3. c. 25. § 1. 1 Ann. b. 1. c. 13. § 11. 12. 5 Ann. c. 19. § 3. 4. 6 Ann. c. 5. § 4. 6. § 17. § 6.

And declaring them to be redeemable by parliament, 9 & 10 W. 3. c. 25. § 47. & 44. § 70. 6 Ann. c. 17. § 6. 9 Ann. c. 21. § 24.

Standard, (From the Fr. etendard, &c. flag, ensign,) In the general significations, it is an ensign in war. And it is used for the flanging measure of the King, to the flanging whereof all the monarchies in this land are or ought to be framed, by the clerks of markets, alnagiers, or other officers, according to Magna charta and divers other statutes: And it is not without good reason called a standard, because it flanclh conflant and immovable, having all measures coming toward it for their conformations; even soldiers in the field have their standard or colours, for their direction in their march, &c. to repair to. Britton, cap. 30. There is a standard of money, directing what quantity of fine silver and gold, and how much alloy, are to be contained in coin of old herling, &c. and standard of plate, and silver manufacturers. Stat. 6 Geo. 1. c. 2.

Standell, is a young shire oak-tree, which may in time make timber; twelve such are to be left flanging in every acre of wood at the feling thereof. Stat. 35 H. 8. c. 17. and 13 Eliz. cap. 25.

Standing stamp, Not to be kept in time of peace, without consent of parliament, 1 W. & M. liff. 2. cap. 2.

Stane's, For maintaining Stane's bridge, 13 Geo. 2. cap. 25.

Stannaries, (Stannaria, From the Latin tannum, tin,) Signifies the mines and works where this metal is digged and purfied, as in Cornwall, and other places: Of this real Carol. 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 Pleau-der's case of mines, fol. 327. and C. 12 Rep. fol. 9. And further, for the liberties of the stannary-counts, fee 10 Car. 4. cap. 21. The account of these there are four in Devon, and four in Cornwall. Comptil, edit. 1727. Labourers in the stannaries may recover their wages before justices of the peace, 27 Geo. 2. c. 6.

Stapllo, (Staplum,') Comes from the Fr. Eflate, i. e. forum publicum, a market or staple for wines, which are the principal commodity of France; or rather from the Germ. Stapelen, which signifies gathering, or Ieap any thing together: In an old French book it is written A Ca-
The annual amount of the customs of the flappe at Calais, 27 H. 6. c. 2.

Prohibitions shall not be allowed in the courts at Calais, 1 H. 7. c. 3.

The officers of the flappe prohibited from taking recognition of any debts but of flappe, 23 H. 8. c. 6. f.

Star, (Star. [i.e. Star.]) A contravention from the Hebrew Shetar, which signifies a deed or contract. All the deeds, obligations, and releases of the Jews, were anciently called Star, 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 fulness whereof of is expressed in Latin just under it, like an English condition under a Latin obligation. See the Plea rolls of Pofeb. 9 Ed. I. Rot. 45, 56, &c. where many Stars, as well of grant and release as obligatory, and by way of mortgage, are pleaded and recorded at large. Cowell, edit. 1777.

Star and Wint, Penalty on cutting farih and bent on sandhills, 15 Geo. 2. c. 33. sect. 6.

Star-Chamber, (Camera stellata, otherwise called Chamber des etuiles.) Was a chamber at Westminster, to which were committed, by and by the power of the King, all petitions, pretences, and conjectures, because at first the ceiling thereof was adorned with images of gilded Stars. And in the 25 Hen. 8. cap. 1. it is written the starred chamber, Henry the seventh, and Henry the eighth, ordained by the statutes, viz. 3 Hen. 7. cap. 1. and 21 Hen. 8. cap. 2. That the Chancellor, assisted by others there named, should have power to punish saints, riots, forgeries, maintenances, embassies, perjuries, and other such misdemeanours as were not sufficiently provided for by the Common law, and for which the inferior judges are not so proper to give correction: And because that place was before set apart to the public service, it was still used accordingly. Touching the officers belonging to this court, see Camden, 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. 1777.

Starth, A duty on firch, 2 Wm. 8 M. c. 4. f. 40. 10 Ann. c. 26. f. 7. 12 Ann. b. 2. c. 9. f. 7. made perpetual, and part of the general fund, 3 Geo. 1. c. 7.

The duties imposed by 12 Ann. b. 2. c. 9. made perpetual, by 6 Geo. 1. c. 4. in order to be subscribed into South Sea stock, and the surplus charged with annuities to the bank, 2 Geo. 2. c. 3.


Every box containing 4560 solid inches, to be deemed 1314 pounds of firch, 1 Geo. 1. b. 1. c. 2. f. 6.

Hair powder imported to pay as firch, 3 Geo. 1. c. 4. f. 14.

Starch-makers to use oblong or square boxes, 4 Geo. 2. c. 14.

Penalty on removing or concealing firch, 4 Geo. 2. c. 14.

Penalty on adulterating Hair powder, 4 Geo. 2. c. 14. f. 5.

Statarius, A canon residuary in a cathedral church. See Statarius.

Statarius, A grave or tomb adorned with statuaries. See Statarius.

Statarius, A man, 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. Parv. Antiq. 456.

Statut, (Statutum.) A written law, made with the concurrence of the king and both houses of parliament. 4 Parl. Abr. 1233.
STA

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.

4. 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 Inst. 25, Br. Parl. p. 76. Hob. 111.

It is a common rule, that a parliament may be held open without summoning the Lords, spiritual or temporal, to sit. The better opinion is, that they ought to be summoned, because they have, by the law and custom of parliament, as good a right to sit in the house of Lords as any other barons. 2 Inst. 585.

If the prelates, however, after having been summoned, voluntarily abstain themselves, the King, Lords temporal and Commons, may make an act of parliament without them. 2 Inst. 585.

This is commonly the case, where a bill is brought into parliament for attaining an offender of high treason. The Lords frequently are, by the law of the land, to prefer at the passing of such a bill; yet, if the act proceeds, it is valid. 2 Inst. 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 Inst. 585, 586.

Two bills being read in parliament, the one intituled, a Confirmation of the Statute of Provisions, and the other, of the King's restitutio in specie, were both read. Coke, 1 Pl. Rep. 44, 145. But neither of them was assented to. The King refused to assent to the first, upon the ground, that it was a statute of the realm; yet two bills were done to be read in parliament, intituled, a Confirmation of the Statute of Provisions, and the one intituled, the King's restitutio in specie. Coke, 1 Pl. Rep. 44, 145.

The voice of the pope, of dispensing of ecclesiastical benefits within this realm, the archbishop of Canterbury and York, on the whole clergy of their provinces, made their solemn protestations in open parliament, that the power of the pope be not confirmed to them. Coke, 1 Pl. Rep. 44, 145.

A bill was brought into parliament in the time of Henry the sixth, that no man should consent to 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 bishop and clergy affented thereto, as of right, as the same were given to the pope, and the power of it was confirmed to the pope. Coke, 1 Pl. Rep. 44, 145.

A bill was brought into parliament in the time of Henry the sixth, that no man should consent to 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 bishop and clergy affented thereto, as of right. As the same were given to the pope, and the power of it was confirmed to the pope. Coke, 1 Pl. Rep. 44, 145.

And wherever an act is so specially entered in the parliament roll, to have been enacted by the King, Lords temporal and Commons, it is not to be inferred, that the provisions were not summoned to parliament: But it must be intended that they voluntarily abstained themselves; or refused to give their assent to, or protest against the passing of an act; or gave such voices as were contra legem et confudendum parliament. 2 Inst. 585, 587.

Many ancient statues 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 fain, by whom, but, as these have constantly been received as statues, the presumption is, that these or such acts are intended to be made by lawful authority. Hob. Pref. to the Stat. 1 Inst. 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. 5 Inst. 25.

Upon this principle, if there be no such difference, nor any difference 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, Act secundum et conueniendum biis, quae de communi concilio regni nobis contingant ordinance, and infers, that the name Ordinance of Parliament took its rise from the word ordi-


Prynn's Animad. on 4 Inst. 13.

Where any statute is against common right and reason, or repugnant, or impede to be performed, the Common law nullifies it, and adjudge it to be void. 8 Rep. 118. Bonham's case. 4 Inst. 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 initiot. 11 Rep. 63.

Fether'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 sheriff 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 persons might read or take copies of them. 2 Inst. 526, 644. 4 Inst. 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 Inst. 26.

The title of an act of parliament is no part of it. 3 Rep. 33. Peeler's case. Hard. 324. 1d. Raym. 77.

This is usually framed by the clerk of that house in which the bill first passes; and is seldom read more than once.

The custom of affixing titles to statutes did not begin till about the eleventh year of the reign of Henry the seventh. 1d. 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. Hereafter the titles of parliament were made without preamble. 6 Mod. 62. Mills v. Wilkins. 8 Mod. 144.

2. Of those things which are incident to a statute, and from what time a statute begins to be in force.

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 Inst. 235.

2 Inst. 235.

If any offence is made felony by statute, it seems clear, that every such statute does, by necessary consequence, subject the offender to the like attainder, forfeiture, &c. and does require the like construction, as to those to whom shall be accounted accessories before or after, and to all other intents and purposes, as is usual to a felony at Common law. 1 Inst. 393. 3 Inst. 47.

49, 50. 8 K. Mifprision
Admission of felony is as well incident to a felony by statute, as to one at the Common law. *H. H. P. C.* 657.

When any power is given by statute, all incidents, necessary to the making it effectual, are also given: for the master and servant for aliquid concedit, concedet vide tur et id, per quod deventur ad illud. 12 Rep. 132, 131.

2 Infl. 306.

If an action of waste should now be given against tenant in tail, after possibility of issue, &c. there is damages which would be given to the tenant in tail, although the tenant in tail, &c. For; these were recoverable under a former statute, by which this action was given; and whenever the same action is given in any new case, all that before appertained to it is also given. *Bro. Waje.* pl. 68.

Every statute begins to have effect, until a time for its commencement is expressed, or for the first of that session of parliament in which it is made. 1 Rol. Abr. 465. *Hawer's* C. Bro. Relat. pl. 35. 4 Infl. 25, 27. *Hob.* 398. Sid. 310.

But whenever a particular day, to which it shall extend, is appointed by an act of parliament, its relation shall be continued to the 24th day of June, 1677; but shall, although continued to the 2nd of June, be confirmed, as if there had been one and the same act of parliament. 1 C. 22. *Staaden* v. *The University of Oxford.*

It is in general true that statutes have no retrospect beyond the time of their commencement; for the rule and law of parliament is, that *Novo consiliato futuris formam deiect impropera praebiatur.*

A treaty of marriage being on foot between the plaintiff and a person whom he afterwards married, and had 2000l. with her as a portion; *Shooter,* who was of kin to the plaintiff, promised to give him such, or to leave him as much by his will; this promise was made before the 24th day of June 1677; *Shooter* died in the September following, without having paid the money, or made provision by his will for the payment thereof. An action was brought against his executor, and the question made upon a special verdict was, whether this promise, not being in writing, was within the 29 *Car.* 2. c. 3. words, *Land* v. *Coly.* Plund. 79. *Bro. Parl.* 86. *Hob.* 222.

If two acts are made in the same session of parliament, and no time is fixed for the commencement of either, neither shall have priority: for both have relation to the same day and infall of time. *Ed. 2.* But if two statutes, be confirmed, as if they had been one and the same act of parliament. 1 C. 22. *Staaden* v. *The University of Oxford.*

A statute of marriage being on foot between the plaintiff and a person whom he afterwards married, and had 2000l. with her as a portion; *Shooter,* who was of kin to the plaintiff, promised to give him such, or to leave him as much by his will; this promise was made before the 24th day of June 1677; *Shooter* died in the September following, without having paid the money, or made provision by his will for the payment thereof. An action was brought against his executor, and the question made upon a special verdict was, whether this promise, not being in writing, was within the 29 *Car.* 2. c. 3. words. "That is, from that day before the 2nd of June, which shall be in the year 1677, no action shall be brought, to charge any person, upon any agreement made upon confirmation of marriage, unless the agreement, upon which such act shall be brought, or some memorandum or note thereof, shall be in writing and signed, &c." There was for the plaintiff. *Et pet.* 1: It cannot be presumed that this act was to have a retrospect, so as to take away a right of action to which the plaintiff was intitled before the 24th day of June 1677. 2 *Sumil.* 318. *Gilmour* v. *The Executors of Shooter.*

But statutes do, in some cases, relate to a time antecedent to their commencement. If a parson holds a farm, with condition not to alienate, and then a statute is made, which inflicts a punishment upon him for holding a farm: Yet the condition remains good. 2 *Brew.* 132. *Partington* v. *Rogers.*

Where *A. covenants* not to do some act or thing, which was lawful to do, and 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 was lawful, and an act comes and makes it lawful to do, such act of parliament is no repeal of the covenant. *Salk.* 138. *Brewster* v. *Kitchell.* *Hil.* 9 W. 3.

It has however been, in a later case, held, that in contesting an act of parliament, made ex post facto, 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.* 1522. *Higgin* v. *Mayer,* *Eaff.* 10 Geo. 1.

3. How long an act of parliament continues in force; and of the great power of an act of parliament.

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 *Bac. 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 cafe does not seem to be law. The statute against perjury, made in the 5th year of the reign of Queen Eliza. was only to continue in force till the end of the next parliament. Another parliament was begun in the thirteenth year of her reign; another in the twenty-sixth year; and another in the twenty-eight years: But this act was not made perpetual till the twenty-ninth year of the reign of that Princess. 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. *Dru. 25."*Hob.* 222.

In an indictment for perjury, in an affidavit to hold to bail, the affidavit was laid to have been 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 taken by virtue of the latter act, and especially as it is no bare continuance; but the stat 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 but a continuance in the continuance *quod* fer. *Str.* 108. *Rov.* *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. *Lutio.* 221. *Annu. Owen* 135. *Gar. Eia.* 750.

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, any acts of a former, in the whole or in part, notwithstanding any words of refrain or prohibition in the acts of the former. 4 *Infl.* 42.

Some parts of *Magna Charta,* albeit it is expressly declared by the 42 *Ed.* 3. c. 3. That all statutes contrary to it shall be void, have been repealed or altered by subsequent statutes; yet their full have been constantly held to be in force. *Tet.* *Geo.* 2. c. 1.

Where an act which has been repealed, is revived, the repeating act becomes of no force. 2 *Infl.* 686.

By the repeal of a repealing statute, the first statute is revived. 12 *Rep.* 7. *The Bishops* cafe. 2 *Infl.* 686. But if an act has been repealed by three different acts, albeit two of these repealing acts are repealed, yet the third continues in force, and repeals the original act. 12 *Rep.* 7. *The Bisop'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. *Tom.* 233. pl. 6.

Thus it is established, 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; *Per* *Pugilla* *Paretia* *praece* *abrogatii.* 11 *Rep.* 61. *Foller's* *Cafe.* *Show.* 520. *Ld. Raym.* 160. 4 *Infl.* 42.
But where a statute, before perpetual, is continued, by a
affirmative statute, for a limited time, this does not amount to a repeal of it at the end of that time. 

*Ry. 337.*

An act of Parliament, contrary to each other, are placed in the same fection, the latter only shall take effect. *6 Mod. 287.* The Inhabitants of St. Clement’s v. The Inhabitants of St. Andrews.

If a proviso is repugnant to the purview or enabling 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. *Fitz. 103.* The Attorney General v. The Governor of Chippa Water-works.

But repeals by implication are not favoured in law, nor are they allowed, except the inconvenience 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 Roll. Rep. 38. 10 Mod. 118.

Altho’ two acts of parliament are seemingly repugnant, yet, if they have no clause of non OBS in the latter, they shall, if possible, have such a construction, that the latter may not be a repeal of the former. *Dy. 347.* Watson’s cafe. *B. Parl. pl. 9. 11 Rep. 63.* Hard. 344.

The power of an act of parliament is so exceeding great, that it is impossible God 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 restore him to a state of nature. *12 Mod. 688.*

The city of London v. West.

An act may be made to cease by a statute, in the same manner as if the party professing it was dead; as is done by the 21 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.* *Middly’s* cafe.

A statute is not to be held void as a statute of parliament enabled to be have or be an heir, who otherwise could not have or be an heir. *1 Lc. 75.* Wheatly v. Thomas.

An estate may be created by an act of parliament without a donor; and the validity of such a limitation is not to be measured by the strict rules of the Common law. For an act of parliament can control the rules of the Common law. *Ry. 335.* Murray v. Eton. *1 Jc. 105.*

A man can only forfeit such an estate as he has, as where tenant in tail with remainder over forfeits, the remainder is saved: But, if the land in tenant in tail is given by natural descent, an act of parliament can’t defeat the rules of the Common law. *Ry. 335.* Murray v. Eton. *1 Jc. 105.*

A statute cannot make it lawful for A. to commit adultery with the wife of B. for the laws of God forbid this: But it may divulge the marriage with B. and make her the wife of A. *12 Mod. 688.* The city of London v. West.

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 Jc. 12.* Crew v. Rumps.

For more learning on this subject, see 4 Bac. Abr. and 10 Mod. 581.

*Statute Merchant,* is a bond of record, acknowledged before the mayor of the place, in the presence of all or one of the constables; to this end, says the statute, there shall be a seal ordained, which shall be affixed to all obligations made on such recognizances acknowledged in the statute; this seal of the statute is the only seal the statute requires to the act of the mayor, but it is to be used in the power or disposal of the mayor, than that appointed by the statute merchant; for though the statute 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 Bac. Abr. 466.* Stat. 27 Ed. 3 c. 9.

To understand a little of the original and constitution of the statute, and the advantage the nation had by this establishment, we must observe, that the place of residence, whether the merchants resided with their ship or not, was commonly cast, for this the King, in the person of the mayor, was no more than a post or market; and this was formerly appointed out of the realm, as in Calais, Antwerp, &c. and other ports on the continent, which were nearest to
And whether the merchants might with safety craft
238. 27 Ed. 30. a. 4. 4 Saff. 238. 2 Redl. 466. 3. 4 Saff. "Estates, or Statutes-Claims, or Statutory-Claims, are utterly va-
power, viz. original, of the statute, and credit of the nation in gene-
larly, for at such times the merchants were the King's customs fully
lach, and were by the officers of the statute, at two or three payments, restored in the Exchequer; besides,
at those times, all merchants goods were carefully view-
med and marked by the officers of the statute, and
this clause avoided the exportation of decayed goods,
or ill wrought manufactures, and consequently fixed a
lamp of credit on the mercantile exports, which,
upon the view, always answered the expectation of the
buyer. Malone's Lex Merc. 337.—338. See the 27 Ed.
cap. 6.
The statute of merchants, according to Lord Coke, are
only wool, woollens, leather, lead and tin; others but-
ter, cheese and clothes; but whatever they were, the
merchants and confables had not only a right to contrac-
its and debts relating to them, but they had likewise
vehicle to all manner of things touching the trade, which was given them, left
the merchants should be divided and drawn from
the business 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 im-
gurable security in their contracts and dealings, and the
most expeditious method of recovering their debts.
without going out of the bounds of the statute.
4 Saff. 238. Malone's Lex Merc. 337. 27 Ed. 3. c. 6.
By this it appears, that this security was only designed
for the merchants of the statute, and for debts only on
the 27th of October, whereas the statute, yet Kings
time others being to apply it to their own ends, and the mayor
and confable would take recognizances from strangers,
forment, then it was made for the payment of money for mer-
chandises brought to the statute; to prevent this mischief,
the parliament in 23 H. 8. reduced the statute flate to
its former channel, and laid a penalty of 40/. on the mayor
and confable, which was to extend the benefit of the
statute to any but those of the statute; but though the
flute of 23 H. 8. cap. 6, deprived them of this benefit;
and it was a new sort of security, to be used ab libi-
tum by all men, known by the name of a recognizance
on 23 H. 8. or a recognizance in the name of a flute
of the statute; and because this act limits and appoints
the same proceeds, execution and advantage in every
particular, as is set down in the statute flate.
Co. Lit. 290.
A recognizance therefore in nature of a statute flate,
as the words of the act declare, is the same with the
format, only acknowledged under other persons; for as the
flate runs, the chief justices of the King's bench and
Common pleas, or in their absence, out of term, the
mayor of the statute at Westminster, and the recorder of
London jointly together, shall have power to take recogni-
zances for payment of debt in the form set down in the
statute; in this, as in the following, we cannot
publish them to act without the consent, which the said ju-
ices shall have the keeping of, and the said mayor and
recorder another of the same print and fashion; and
ey shall have made and acknowledged before either of
the judges, or the mayor and recorder, must be sealed
with the seal of the confoner, with the King's seal in
writing, which is, the number of pounds shall return in
recorder before whom it is taken, who are likewise obliged
to publish 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 obliga-
tions that acknowledged, and seal them in two or three
seals, and deliver the recognizance to such of the
said justices, or with the mayor and recorder that
takes the recognizance, and the other with the clerk,
who is farther obliged, at the requital of the confoner, his
in executors or administrators, to certify such obligations
into Chancery under his seal. Co. Lit. 290. a. 4. 4 Saff.

3

SMART
officer within his jurisdiction: The greatest of these is the Lord high steward of England, which was anciently the inheritance of the earl of Leicester, till forfeited to Henry VIII. by his infamous and monstrous Perjury: But the power of this officer being very great, of late he has not usually been appointed for any long time, but only for the dispatch of some special busines, as the arraiagement of some nobleman in case of treason, or such like, which once ended, his commission expires. Of the court of the Lord high steward of England, you may read, 4Inst. fol. 59.

There is the Lord steward of the King's most honourable household, 24 H. 8. cap. 13, whose name was changed to that of Great-neglect, by 32 H. 8. cap. 39. But this buter was repealed by 1Mar. 2. Parl. cap. 4. and the office and name of the Lord steward of the King's household being changed, some very important concerns, is he, also, in F. N. B. fol. 241. Of his ancient office power first, see Fleta, lib. 2. cap. 3. There is also a Steward of the Marches. Pl. Car. fol. 52, and 33 H. 8. cap. 12. In brief, this word is of so great diversity, that there is in most corporations, and in all houses of honour throughout the realm, an officer of this name and authority. What a Steward of a manor or household is, or ought to be, Fleta fully describes, Lib. 2. c. 71, 72. Cowell, edit. 1727.


Stews, Are those places which were permitted in England to women of professed incontinency, and that for hire would prostitute their bodies to all comers. It is derived from the French Eujet, i.e. Therme, or Bains, because distich About persons are wont to prepare themselves for the same by bathing. And that this is not now, Hemer swears in the eighth book of his Oijfl, where he reckons hot baths among the most effectual means of pleasures. Of these read 11 H. 6. 1. But King Henry the eighth, about the year 1546, prohibited them for ever. Cowell, edit. 1727.

A steward, or inferior officer who cut wood for the priory of Ederne within the King's parks at Clarendon. Rot. Parl. 1 H. 6.

Stife (New) See Calendar.

Stiffness, (Goth. Stifftness, mentioned in flat 10 H. 7. c. 32. and 32 H. 8. c. 14.) Was a place in London, where the fraternity of the Easinghon merchants, otherwise called The merchants of the Hanse and Almstern, anno 1 Ed. 6. c. 13, had a their abode. It was at first fo demarcated of a broad place or court where feal was fold, upon which place that house was founded. Cowell, edit. 1727. See Cell, Urn, Stifffenage. See Frames, Stile, Stiftenage and Sticks, Contracts and wagers relating to stock where made void, and the premium to be reloved, 7 Geo. 2. c. 8. f. 1, 10, 11. 1 Geo. 2. c. 8. Bills for discovery of such contracts, by the and to be annulled, 1 Geo. 2. c. 8. f. 3. And the plaintiffs to give security to answer costs, 7 Geo. 2. c. 8. f. 3. Perons executing such contracts to forfeit 500l. 7 Geo. 2. c. 8. f. 3. Stock fold for a certain day, and not paid for according to agreement, may be sold to any other person, and the roller recover damages. 7 Geo. 2. c. 8. f. 6. And the buyer may purchase the like quantity, where the roller retrench to transfer the flockfold, and shall recover damages. 7 Geo. 2. c. 8. f. 7. Perons on persons selling flock which they are not proved, or on brokers negotiating such contracts, 7 Geo. 2. c. 8. f. 7. Or not entering contracts, 7 Geo. 2. c. 8. f. 9. Sticks. (Cippus.) A wooden engine to put the legs of offenders in, for the securing of disorderly persons, Vol. II. No. 128. and by way of punishment in divers cafes ordained by statute. And it is said that every ville within the precinct of a corn is indictable for not having a pair of flock, and shall be liable to 50l. G. 1. c. 13.

Stola, Was a garment formerly worn by priests, like unto those which we now call handks: And sometimes it is taken for the archiepiscopal pall. Edin. c. 188. Also a vellum which mason wore. Grotius, edit. 1727.

Stolen goods. To help people to stollen goods for reward, without apprehending the felon, is felony, 4 Geo. 1. c. 11. Protectors of such offenders reward, 6 Geo. 1. c. 23. Persons having or receiving lead, iron, copper, bar, bell metal or fowle, knowing it to be stolen, either from a mine, or mine you, or by any one of the King's or Queen's subjects, is felony, 4 Geo. 1. c. 23. Concerning Stowe, (Petra Luna, mentioned in flat 11 H. 7. c. 4.) Ought to weigh fourteen pounds; yet in some places it is more; and in others it is but twelve and a half, Le charre de Plante confait se 30 formeltis, & qualitative formeltis contain 6 petras exceptthe duode libris, & qualitative Petra confait ex 12 Libris. Comptissimo de Ponderibus. A fome of wax is but eight pounds, nor is the fome of beef at London any more. See Wrights and Saffur, and also Crompton's Tactice of Peace, fol. 83. Cowell, edit. 1777.

Stores of War, Embasselling scows of war sent winter fillings made felony, 31 Edw. 3. c. 4.

Penalising of naval scows, 16 Car. 2. c. 5. 19 Car. 2. c. 7. 22 & 23 Car. 2. c. 23. 1 Geo. 1. c. 25. f. 3. Penalty of having scows with the King's mark, 9 & 10 W. 3. c. 41. 9 Geo. 1. c. 8. f. 3. Not to hinder the lending scows to any merchant ship in dire ne. 9 & 10 W. 3. c. 41. 9 Geo. 1. c. 8. f. 3. Treasurers, &c. may search ships, 1 Geo. 1. c. 25. f. 5. Commissioners of the navy, &c. may commit persons counterfeiting their hands, 1 Geo. 1. c. 25. f. 6. Encouragement for raising naval scows in the plantations, 35 Geo. 1. c. 5. 36 Geo. 1. c. 5. 36 Geo. 1. c. 5. 35 Geo. 1. c. 5. And in Scotland, 12 Ann. f. 1. c. 9. f. 2. 8 Geo. 1. c. 12. 2 Geo. 2. c. 35. f. 17. 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. 52. f. 3. Justices may mitigate the penalty of concealing scows, or cause offender to be whipped, 9 Geo. 1. c. 8. f. 4. Justices of assize and quarter-seelions may bear and determine offences relating to seizes, 17 Geo. 2. c. 40. f. 10.

Pre emption of scows imported in neutral ships, given to the commissioners of the navy, during the war, 19 Geo. 2. c. 32. Embasselling scows, &c. excepted out of general pardon, 20 Geo. 2. c. 52. f. 32. No bounty shall be paid on any tar, according to 2 Geo. 2. c. 35. unless each barrel contains 31 gallons and one half, 33 Geo. 2. c. 35. f. 3. Encouragement for the importation of naval scows from America, continued to 29th September 1771, 4 Geo. 3. c. 11.

Straitness, Was he who had the care of the fluid or breed of young horses. Leg. Alfredi, c. 9.

Straitness, or Straitness, mentioned in 18 H. 6. and 1 R. 3. c. 5.) A fort of narrow clothe or Kirky fo called. J. II. strait, (Sax. Strande.) Any flfor or bank of a sea or river. An immunity from custom, and all imposition upon goods or veflils by land or by water, was usuallly expressed by Straight and Stream. As King Henry 2. S L.
to the church of Reckford—Cenobi & confirm in per-
ptium cum ficta & fale, strand & stream. Man. Angi-
tia, tom. 3. p. 4. So the time being, Prince Robert, or 
Saxon Strand, or Strand either by water or by land, and
whosoever of the beholders of Hedingford, that
—by water and by land, and by wood and by strand,
quiet junt de thol Appro, Sec. Parl. antiquit. p. 114.
Hence the street in the west suburbs of London, which
lay next the fieth or bank of the Thames, is called the
Strand. Codd. ed. 1727. Sec Strand.
Strand, (from the Saxon Strand, a fiore or bank of
the sea, or any great river,) Is, when any flip is
either by tempest, or by shore, running on ground, and
Strangert, (derived from the French Strange, alien,
Signifies generally in our language, a man born out
of the laws, or the country at home; but in the law it has a
special signification, for him that is not privy or party to
an act. As a stranger to a judgment, Old Nat. Brev.
dia. 128. is he to whom a judgment doth not belong; and
in this fende it is directly contrary to party of priy.
Cowell, ed. 1727. See Philip.
Strat. See Step.
Stray. See Chip.
Streamworks, A kind of works in the fanitories,
mentioned in 27 H. 8. c. 23.
Street, How to be cleaned and repaired in market-
towns, 1 Gis. 1. ft. 2. c. 52. f. 8. and Strand of London to
be cleaned and repaired, 37 H. 1. c. 23. ft. 9.
Streamus-subitalis. The circumstances of noise and
crowd, and other turbulent formalities at a process or trial
in a publick court of justice. And therefore our wife
ancestors did in many cases provide, that right and justice
should be done in a more solemn, and quiet manner.
Cowell, edit. 1727. Parl. debq. p. 344.
Streetward, Was an officer like our surveyor of the
highways, or rather a scavenger. It is mentioned in the
Mongolfian, 2 tom. pag. 187.
Strick, See Church, Palaces.
Strip, (Stripula), Distillation, maturation, from the
French Stripes, and English fafer, to dry with a mixture of
four things, to make flip and w Aff, or fflup and wafl.
See Correspond.
Strong, Is a Saxon word, signifying a fiore or bank of
the sea, or any great river. Cowell, edit. 1727.
Strumpet, (Mistress). A whore, harlot, or courte-
fan. This word was heretofore used for an addition.
Cowell, edit. 1727.
Strusen, May be imported, 10 & 11 Will. 3.
c. 24. The king, where intituled to stranger, 17 Ed.
ft. 1. c. 11.
Stuff, (Appell.) To call, name, or intitle one; as
the flit, for miles King of England, is George the Third,
by the grace of God, King of Great Britain, France and
Ireland, defender of the faith. There is also an old and
new style, used in the dates of things abroad. Joc.
See Cafbrar.
Subedar, Is an ancient officer in the church; He
is mentioned in the apostolical canons, vols. 43, 43. He
was not made by an imposition of hands, but by the delivery
of an empty plate and cup by the bishop, and of
a pitcher, basin, and towel, by the archdeacon. His of-
Pho was to wait on the deacon 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 liturgians; and therefore it is thought proper
to write so much of his name and office. Cowell, edit.
1727.
Subures, (Subitii), Are the members of the com-
monwealth under the King their head. Wide's Hist. 25.
Subuligerin, Is any beast carriyng the yoke. Mat.
Par. 124. 42.
Subverter, One who is guilty of incest; from the
Saxon Syb, cognizit, and lega, caracitons, or rather from
the Saxou sibser, i. e. inchoe.
Submaritll, (Submeruusius), Is an officer in the
Mi$ellatica, 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. Comp. Jurid.
fol. 164. He is otherwise called Under Marshal.
Subtrahere, To subtract. To subtract. 12 Abridgment.
Subtrahere, To cut the fnees of the legs or thighs,
to hamstring. It was an old custom in England, Mere-
tries & impudicæ mulheres sultanear. See Cibemum de
129.
Subvention, (Subsaitio), A secret or underhand
preparing, intruding, or bringing in a false witness,
or corrupting or allowing to do such a false act. Hence
sub-erotation of perjury mentioned in the act of general
parson. 12 Car. 2. cap. 8. is the allowing to pejury.
Subvention of wittings. 23 H. 8. c. 9. and 3 Par. Infis.
fol. 167. See Subper.
Subtus, Is a writ, whereby all persons under the
degree of peerage are called into Chancery, in such case
only where the Common law fails, and hath made no
 providing; so as the party who in equity hath wrong,
can have no other remedy by the rules and course of the
Common law. Weft. Synb. part. 2. tit. Proceedings
in Chancery, fol. 18. But peers of the realm in such cases
are called by the Lord Chancellor's, or Lord Keeper's let-
ters, giving notice of the suit intended against them,
and requiring them to appear. There is also a subpera ad
trifusionum, for the summoning of witnesses as well in
Chancery, as in the King's Bench. There is a writ to the
Exchequer, as well in the court of Equity there, as in
the office of Pleas. And these names proceed from the
words, which charge the party summoned to appear in
the said suit, and at the place assigned, subpœna centum
librums, Cowell, ed. 1727. Subpœna not to be granted
without securitie found for the suit. 15 Hen. 6. Penalty
on perons not appearing to give evidence, when
served with a subpœna, 5 Eliz. cap. 9. Subpœna shall
till issue out of a court of Equity, till after the bill is
filed, except for an injunctio, 4 Ann. c. 16. f. 22.
Subtus, (Subsidium) Signifies an aid, tax or tribute,
granted by Parliament to the King, for the urgent occa-
sions of the kingdom, to be levied of every subject, ac-
cording to the rate of his land or goods, after four firings
in the pound for land, and two firings eight pence for
goods. Now, of course, there are some dishes of
such taxes, as are called the eleventh, twelfth, or
subsidies at large. The King had the right to levy such
taxes as he pleased. The Conqueror had thefe taxes, and
made a law for the manner of their levying, as appears in
years after the conquest they were levied otherwise than
now, as every ninth sheep, every ninth hen, and every
nineth hogshead, Ed. 3. c. 1. cap. 20. But you may
seem great variety in Ralph's Abridgment, tit. Taxes,
Tenta, Fijentent, Subsidies, &c. and 4 Infis. fol. 26 and 33.
Whence we may gather there is no certain rate, but as
the parliament shall think fit. Subsidy is in our
inhabitats sometimes confounded with duties. 11 H. 4.
l. 5. c. 17.
A fifteen granted for Algnia charta, and the Charta de
The ninth fee, &c. granted, 14 Ed. 1. f. 1. c. 20.
No aid to be taken but by allent of parliament, 14
Ed. 3. f. 2. c. 1.
An act for the revenue enained in parliament, 14
Ed. 3. f. 2. c. 1.
The penalties of the factories of labourers given to
the people in aid of their subsidies, 23 Ed. 3. c. 8.

Subsidy, and in the poor, so granted to the clergy of the province of Canterbury, 32 H. 8. c. 2.

Substance. The substance of things is most to be regarded; and therefore our law doth prefer matter of substance, before matters of circumstance, Us. as in the statutes 36 Ed. 3. c. 15. 33 H. 6. c. 10. 21 H. 7. c. 24. 23 H. 7. c. 13. 31 H. 8. c. 19.

Substitutes, (Substitutio.) One placed under another person to transact some business. Us. See Acceptors.

Suburbant, Are householders, according to the Magna Charta, 2 P. 2. 468. Succession to the crown, see King.

Succession, (Secessio.) Is that by which the succession or accession to another's estate, is transferred to the heir of the deceased, or to another person. Us. 1 & 2 Ed. 4. c. 57.

Successor, (Successor.) Is a titular bishop appointed to aid and assist the bishop of the diocese. Us. 2 & Ed. 9. fol. 79. Calls him a bishop's Fregent. Spelman says, Dicuntur episcopi qui archiepiscopus suffragani & inferioriter censu dicuntur quos suffragiis suos catholicae judicantur. It was enacted, (about 26 H. 8. c. 14.) that it should be lawful for every diocesan, at his pleasure, to elect two honest and discreet spiritual persons, within his diocese, and to present them to the King, that he might give one of them such title, file, name, and dignity of one of the fees in the said diocese specified, as he should think convenient, and that every such person shall be called Bishop Suffragan of the same fee, Us. Camden in his Brittan. tit. Kent, speaking of the archbishop of Canterbury's Suffragans, says, When the archbishop is buried in wegher affairs, he has other matters that pertain to order, only, and not to the ecclesiastical jurisdiction. Others call them suffragial bishops; whose whole number is limited by the said diocese. Us. Swift, edit. 1717.

Sugar, Importing it, not within the statute against regat. 15 Ed. c. 25. f. 21.

Sugar, (Sucrose.) Is a duty upon sugars, expired, 1 9 Jac. 2. c. 4.

Duty upon sugars, 6 Ed. 2. c. 13.

The drawback on sugar imported from the English plantations in America, 9 & 10 H. 3. c. 23. f. 8. 6 Ed. 2. c. 13. f. 9. 26 Ed. 2. c. 32. f. 5.

And an exportation of brown Muscovado sugars refined in the West Indies, 9 & 10 H. 3. c. 23. f. 9. 13 Ed. 2. c. 13. f. 10.

Sugar may be imported from Spain and Portugal, as usual, 6 Ed. 2. c. 13. f. 13.

Drawback on British refined sugars out of the last subsidy, 21 G. 2. c. 3. f. 7.

Suggestion, (Sugestio.) Is in law a furnishing, or representing of a thing; and by Magna Charta no person shall be put to his law on the suggestion of another, but by lawful witnesses. Us. 9 H. 3. c. 28. Suggestions are grounds to move for prohibitions to suits in the Spiritual courts, Us. which can also have effect, without permission of their judges, 2 9 & Ed. 5. c. 536. Though matters of record ought not to be stated upon the bare suggestion of the party; there ought to be an affidavit made of the matter suggested, to induce the court to grant a rule for fray the proceedings upon the record. 2 Ed. 537.

There are suggestions in pleas, for a returns balance; which it is said are not traversable, as there are for prohibited actions to the spiritual or admiralty courts. 1 Plowd. 76.

Breach of covenants and of grants of leases must be suggeted upon record, Us. 8 & 9 H. 3. 8.

Suffit, (Selta.) Signifies a following another, but in divers senses. The first is a suit in law, and is divided into real and personal, and is all one with action real and personal. kitchen, fol. 74. Secondly, Suit of court, or suit-ferment, which is the suit by which tenants owe to the court of their lord. 7 H. 2. c. 2. Thirdly, Suit-covenant is where your ancestor hath covenanted with mine to sue to his court. Fourthly, Suit-coffem, when I and my ancestors have been sealed of your own and your ancestors suits, times, and minds. Fifthly, Suit real or regal, when men come to the real court of kings. Sixthly, Suit signifies the following one in case, as suit feft. Wynn. 1. cap. 45. Lastly, It signifies a petition made to the King, or any great person. Us. Cassell, edit. 1727.

Suit to the King's courts under 40. 6 Ed. c. 8.

Suitors not to depart from the King's court without remedy, 13 Ed. 3. f. 1. c. 50.

A writ de natae not to be granted, unless the Chancellor is appointed that it be with the content of the plaintiff, 10 Ed. 3. f. 3. c. 3. art. 4.

The persons distrained at the suit of another by procists of the King's Bench, Mathella, or inferior courts, without the plaintila's assent, 8 Ed. c. 2. f. 4.

Suit of Court, That is suit to the Lord's court, is that inclusive where the feudatory tenant was bound to do every thing that the Lord's court could. At the Lord's court he might be expressly mentioned in the grant how often those courts should be held. This appears by Festa, 2. c. 7. c. 1. par. 14. Suit facifter facias ad curiam dominii & quos facias per annum. Sometimes one or more, but never exceeding three. Torn mentions two, viz. Et faciet facias ad curiam Contaraitis his per annum, feliciter in fefta Michaelis et Psaltie. But all the lord's tenants were not bound to attend his courts, but only those to whom their estates were granted upon that condition: But every man was bound to attend the sheriff's turn twice in every year; which fee in fes fes. reguli. And if the inheritance, by reason whereof the tenant was bound to attend only at one court, did descend to co-heirs, he who had capitulation partibus, was bound to attend the Lord's court both for himself and all the coheirs. Us. Cassell, edit. 1727.

None to be discharged for suit of court, but they who are bound to it by charter or prerogation, St. Mary 53 H. 3. c. 9.

Joint-tenants and parceners shall make but one suit, 53 H. 3. c. 9.

The remedy against the lord discharging for it, where it is not due, and against the tenant with holding it, where it is due, 52 H. 3. c. 9.

It is not taken away, by 12 Car. 2. 12 Car. 2. cap. 24. f. 5.

Suit of the King's Peace, (Sulta path Regium.) Is the passing a man for breach of the King's peace by trespass, interferences, or trespashes. 6 Rich. 2. f. 2. c. 1. and 27 & Ed. 3. c. 15. and 5 H. 4. c. 15.

Suit, (Suits.) Signifies a suit-fervice, or a suit in fes. Heath, 1. cap. 4.

Sulcius aquae, A small brook or stream of water, called in some places a fite, in Effet a deite. Us. Cassell, edit. 1727.

Stilep, (From the Sax. Sub, i. e. Aranum.) Signifies a Plough-land. 1 9f. 3. c. 6.


Somnium, (Solum & Signamuri.) A horse-load, also toll for carriage on horse-back. Com. fur. fol. 191. For where the charter of the forest, cap. 14. hath their words, For a horse that bears loads every half year a halfpenny, the book called Popula Odi, with these words, Pen uno eque portas funnagium, per dimidium annum obid. Chart. E. num. 7. It is otherwise called a Seame: And a Seame in the wellern parts is a horse-load. Us. Cassell, edit. 1727.

Summer.
For if two or more join in bringing an action, and one makes default, the nonuit of him is the nonuit of them all. Bro. Summ. and Soc. pl. 5.

So if divers join in a writ of error, the assignation of errors cannot be by one without the others. Crab. Eliz. 892. Anderson v. Ld. Cromwell.

To prevent the great inconvenience, and the failure of justice, which would be if all, in whom there is a joint right to an action, should be prevented or colluded of any one of them, from having the effect of a suit for the recovery of such right; the law has provided, that if any of those persons, in whose name a joint action is commenced, does not appear, or after appearance make default, the other or others may have judgment ad sequestrum, or in other words, judgment of severance. Hard. 318. Manby v. Leeol. Bro. Summ. and Soc. pl. 4, 16.

If two bring aliax, and one comes not at the day, a summons ad fequestrum final may issue; and, if the party summoned does not appear at the return of the summons, the other party may pray judgment ad fequestrum final. Bro. Summ. and Soc. pl. 4, 18.

So if eight have joined in aliax, and five of them are nonsuited, or will not sue, judgment of severance may be against the five. Bro. Summ. and Soc. pl. 16.

So in due course, by two, if one makes default, summons and judgment may be, and there the nonuit of the one shall not be the nonuit of the other. Fiz. N. B. 128. 1 Inf. 139.

The consequence of this judgment is, that, notwithstanding the severance of one or more who did not appear or made default, the other plaintiff or plaintiffs in the action may proceed in the suit. 4 Bac. Abr. 651.

The justices of nisi prius have no power to give a judgment of severance; for this can only be done by the justices of that bench where the record is. Bro. Summ. and Soc. pl. 10. 2 Roll. Abr. 485.

Should any two plaintiffs 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 nonuit is not in cafe remittory before appearance, because a writ may have been purchased in the plaintiff's name without his priuity. 1 Inf. 139. Bros. Summ. and Soc. pl. 10. 2 Roll. Abr. 485.

But if two joint plaintiffs have both appeared, and afterwards one makes default, the court may, without ifusing any summons, immediately give judgment of severance. Bros. Summ. and Soc. pl. 10. 1 Rep. 135. Hard. 317.

No judgment of severance can be given in a writ of error, unless it is prayed before the defendant has pleaded nulla est erratum. Cro. Jac. 177. Blount v. Sclathe.

But such judgment may be after joiner in the assignment of errors. 2 Ld. Pr. Reg. 663.

For more learning on this subject, see 29 Vin. and 4 Bac. Abr. tit. Summons & Severance.

Summons ad Warrantiasundum, is the process whereby the voucheer is called. See Coca in Eastt. b. 104. be.

Sumptuary Laws, Are laws made to restrain excess in apparel, or any costly clothes, of which we have heretofore had many in England, but all repealed. Ann. 1 Jac. 3 Inf. 190. b.

Sunday, (Dei Dominici, 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 such like sports on Sunday, shall forfeit 3s. 4d. and 5s. for pillaging, bowling. Ec. Stat. 1 Car. 1. And if any butcher kill or sell meat on a Sunday, they are liable to a penalty of 6s. 8d. Carriers, drovers, &c. travelling on the Lord's day, incur a forfeiture of 201. Stat. 3 Car. 1. c. 1. No person shall do any worldly labours on a Sunday, (except works of necessity and charitable) and any making of 9s. and crying and exclaiming to sell any wares or goods on a Sunday, the goods to be forfeited to the poor, Ec. on conviction before a justice of peace, who
who may order the penalties and forfeitures to be levied by distress; but this is not to extend to dreeing meat in families, innis, cook-shops, or victualling houses; nor crying of milk on a Sunday in the morning or evening, 29 Car. 3. c. 7. An indictment for exercising the trade of a butcher must be laid to be contra formam huoniti; for selling victuals, or keeping ale, may be entered and recorded to be done on a Sunday, it makes it all void. 2 Hy. 3. 3 Shop. Abr. 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 enough, if not being a proces; but Holt, Ch. J. thought it ill, because the act intended to refrain all acts of legal proceedings. 1 Le. Raym. 756. A writ of inquiry cannot be executed on a Sunday. 1 Strange 387. See 20 Vin. Abr. tit. Sunday.

Super-injunction. (Super-institutio.) One Injunction upon another; as where A. is admitted and instituted to a benefice upon one title, and B. is admitted, instituted, &c. by the precentor of another. See Huskins's case in 4 Rep. 2 Parl. fol. 493.

Super-furtur. When a criminal endeavored to exe- cute himself by his own oath; or by the oath of one or two witnecfes, and the crime was so notorious that he was convicted by the oaths of many more witnecfes; this was called Super-jurare. Leg. Hum. 1. c. 47. Leg. Athel- fjan. c. 16.

Superconuatione patiente, is a writ judicial, that lies against the King's widow, for marrying without his license. 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 were to be done, were it not for that wherein the writ is granted. For example, a man regularly is to have surety of peace against him of whom he will swear he is afraid, and the justice required hereunto cannot deny him; yet if the party be formerly bound to the peace, either in chancery or elsewhere, this writ lies, to stay the justice from doing that which otherwise he ought not to do, even the power of the King Orde, and F. N. B. fol. 236. For preventing the supefedeas of executions, see the statute 16 & 17 Car. 2. cap. 8. Canwell. edit. 1797.

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. Abr. 667.

A Superfedeas is either express or implied: An express Superfedeas is sometimes by writ, sometimes without a writ; where the breach of a duty, or the non-performance of 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. Abr. 667, 668.

If an exigent is awarded against a man, he may have this writ of Superfedeas without the suit; and it may be directed to the party's finding sureties 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. Fitzh. N. B. 236. Or that party, against whom an exigent has been awarded, may, upon finding sureties in the court which has power to grant him a Superfedeas, have an absolute writ.

of superfedeas, to the same effect, directed to the sheriff. Fitzh. 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, dies by a second order in abeyance, to be done. 4 Bac. Abr. 668. If it is a justice of the peace, and by purprize, he may, upon finding that he has made an improper order, by a second order superfede it. Sttr. 6. The inhabi- tants of Paneas 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 any words which are inferred in it, annul the act; and it may perhaps be proper, that no express superfedeus, unless it be by writ, shall have such a retrospective power. 1 Hawk. 145.

That is an implied superfedeus, by which, altho' no writ of superfedeus issues, the doing of a thing that other- wise might lawfully have been done is prevented. 4 Bac. Abr. 668.

A writ of error, a certiorari, and divers other writs have by implication of law, in fome measure the same effect as a writ of superfedeas, but an implied superfedeus never makes any act void which was done before it existed. 4 Bac. Abr. 668.

No writ of superfedeus lies from any other court to the court of chancery: but this court may superfede its own writs. 4 Bac. Abr. 668.

If one man hath fixed out a supplicavit from the court of chancery, and another man to find sureties of the peace, he, against whom this is granted, may have a superfedeus from the same court commanding the sheriff to forbear to arrest him. Fitzh. N. B. 238.

But a writ of superfedeus lies from the court of chan- cery to any other court.

A capias ad fatiam et acidam having issued from the court of King's bench, a superfedeus was issued from the court of chancery commanding the justices of that court to surfece. This superfedeus was thought by fome to be contrary to law: But Finch, because it was out of a higher court, surseased, and no further proceedings were had. 4 Bac. Superf. pl. 5.

Where surety of the peace is granted by the court of King's bench, if a superfedeus 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. Peace pl. 17.

If any capias or process issued by the court of King's bench, the sheriff or officer, by order of the court, or the justices thereof, he may, in their discretion, make the same order in their place. 4 Bac. Abr. 668.

For more learning on this subject, see 20 Vin. & 4 Bac. Abr. tit. Superfedeas.

Superflatus de Artificius Cleri, Cap. 6. is a writ lying against the sheriff or other officer, that disturbs in the King's highway, or in the glebe land, anciently given to the rectories. F. N. B. fol. 176.

Superflatus de Poy, qui nul fit teret Sinter, &c. Is a writ lying against him that uses victualling either in grofs or by retail, in a city or borough town, during the time he is mayor, &c. F. N. B. fol. 172.

Superflatus factum pour Beneficel & Harold de Hop, &c. Is a writ lying against him that uses victualling either in grofs or by retail, for holding plea in his court of freehold, or for trespass or contravals not made within the King's houfhold. F. N. B. fol. 241.

Superflatus etc. Is a writ that lays against him who keeps my factory, departed out of my service, against law. F. N. B. fol. 176.

Superflitious usus, To churches were void, 23 H. 8. c. 10.

Beneficed
S U R

Benefited clerk not to take salary to ring for any foul, 21 H. 8. c. 13. f. 3.

Colleges, chariities and hospitals, given to the king, 37 H. 8. c. 4. 1 Ed. 6. c. 4.

Commissions to a jury of lands given to superflu-

ous ues, 1 Ed. 6. c. 11. f. 10.

Lands given to superfluous ues vested in the crown for the sake of the public, 1 Geo. 1. f. 2. c. 50.

Superfetos, Is a Latin word, signifying a surveyor or overseer. It was anciently and still is a term among farms, especially of the better sort, to make a supervisor of a farm, but it is of little purpose; however the intention might be good, that he should supervej the executor, and the will performed. Cert. 1727.

Supervitator, Is a writ issuing out of the chancery, for the recovery of a coat of arms or estate of property against a man: It is directed to the justices of the peace of the county, and the sheriff, and is granted upon the statute, anno 1 E. 3. c. 16. which ordains, That certain persons in chancery shall be af-

signed to take care of the peace. See P. N. B. fol. 80. This writ was of old called Breve de minibus, as Lambert says in his Eiusdem, out of the Regul. Orig. fol. 88. See Supery of the peace, and 20 Vin. Ab. 99.

Supremacy, The king bound to provide remedy in parliament for mischiefs in the church, 23 Ed. 3. f. 6.

The king patron paramount, ibid. f. 4.

New shall have benefit within 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, 1 R. 2. c. 5.


The submission of the clergy to the king, 25 H. 8. c. 19.

The royal assent necessary to the enacting any canons, 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. 32. 1 Ed. 6. c. 32. &c.

The supremacy denied, 1 & 2 P. & M. 8. c. 42.

The supremacy restored, 1 El. 1. c. 17.

The oath of supremacy appointed to be taken, 1 El. c. 1. f. 19. 5 El. c. 1.


Surcharge of the Foiled, (Superiusario foris.) Is when a commoner puts on more beafts in the forest then he has a right to. Mosswood, part 2. cap. 14. num. 7. And is taken from the writ De fecondo superiusario fuperis. Given when the commoner procureth. 3 Indt. fol. 293.

Sur rit in bis, Is a writ that lies for the heir of that woman, whose husband has aliened her land in fee, and the brings not the writ of Cui in viea for the reco-

very of her own land; in this case her heir may have this writ against the tenant after her decease. F. N. B. fol. 193.

SUR. See Ball, and 20 Vin. Abr. 101.

Surry 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 peace, taken by a competent judge of record, for the keeping of the peace. This peace may a Justice of the peace command, either as a minister, when he is commanded thereto by a higher authority; or as a judge, when he doth it of his own power, derived from his commission. Of both these, see Lamb. Eire, th. 2. cop. 2. p. 77.

Coppell, edited. 1797.

Surety, May, according to his discretion, bind all three to keep the peace, who, in his presence, shall make any affray, or shall threaten to kill or beat any person, or shall contend together with hot words, and all those who shall go about with unusual weapons or attendance, with the eftro for the people; and all such per-

sons shall be secured by him to be common barrattors; and all who shall be brought before him by a contable, for a breach of the peace in the presence of such contable; and all such persons who, having been before

bield to keep the peace shall be considered of having for-}

ruted their recognizance. Lamb. 77, 78. Biz. Peace, pl. 5.

Surety. All persons under the king's protection, being of fane memory, whether they are natural born subjects or aliens; good subjects or attain'd to treason or some other crime, have a right to demand surety of the peace. Lamb. 78, 79, 80. 1 Hawk. 126.

Sureties, questioned whether Jews, pagans, or persons, attainted of praetexta 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. Fribb. N. B. 80. Lamb. 8. 2. Lea. 128. 4. Lea. 128.

A woman exhibited articles of the peace, filling her-

self the wife of the defendant, letting out acts of cruelty, and the pendency of a suit in the ecclesiastical court for the restitution of conjugal rights. When the defend-

ant came to put in bail, he inferred, that the recogni-

sion should not be taken for as to carry with it any ad-

mission 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 Pemm, who hath exhibited articles of the peace against him the said James Bambridge, by the name of Hannah Bambridge, wife of him the said James, &c. Str. 1731. Rex v. Bambridge.

Articles of the peace may be exhibited by a husband against his wife. Str. 1707. 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 never be the fear of another; and, if it is demanded against two or more, each ought to enter into a separate recog-

nizance for keeping the peace. Pult. 18.

Surety of the peace may be had against every person whatsoever, being of fane memory, whether he is peer or commoner; or magistrate or privy person; of full age or of full age and of full estate. Hawk. 81, 82. Hawk. 81, 82.

But infants and feme covertus 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.

It is said that surety of the peace shall not be granted for fear of imprisonment; because damages may be reco-


But the better opinion is that it may; for every unlawful imprisonment is an aulflate 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 surety 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. 874. Sir Thomas Seymour's case. God. 215. Fitz. N. B. 80.

Some persons having made a disturbance in a church, and the subminister, who was reading the Collect, made a prayer out of the defe, an attachment of the peace was, on exhibiting articles in the court of King's Bench, if

uted against them. 1 Keb. 290. Rex v. Douglas.

But surety of the peace ought not to be granted to a man for fear of danger to his servant or cattle. Lamb. 89.

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. Dall. 266.

The surety of the peace ought not to be granted for any parting, or divorce, where it is a fear of some prepar or future danger: But the offender must in such case be punished by écoinet or indenture. Dall. 266.

The demand of the surety of the peace ought to be foon after the cause of fear; for the suffering much time to pass, before it is demanded, flews that the patty has been


1. Of granting a writ of the peace by the court of Chancery.

2. Of granting a writ of the peace by the court of King's Bench.

3. Of granting a writ of the peace by a justice of the peace.

4. Of forfeiting a recognizance for keeping the peace, and how such recognizances may be discharged.

5. Of granting a writ of the peace by the court of Chancery.

At the Common law it was sufficient, in order to obtain processes for freeing the peace of 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. *Fitzh. N. B. 79, 80.*

*Abillineous,* who had been taken into custody by a _jopolicitavit_ out of the court of Chancery, being brought by a _ habeas corpus_ before _Jones_ 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 tried, and that he might enter into a recognizance: But it was refused; and _per cur.*: 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 should have taken security for the peace. *Stin. 61.*

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 peace of the peace of out of hatred or malice, but merely for the preservation of his life and property from the parties to the suit, and if such bond is not given, to commit the party to the next gaol. *Camb. 437.*

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 M. L. 132.*

Articles of the peace have been exhibited against Lord _Fane,* and process of the peace having issued upon them, it was indited, when he came to put in bail, that the facts charged were not a sufficient ground for demanding the peace 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 to give such credit to the oath of the party as to order that the fact was stated, that the court may review the articles, and hear any objections arising upon the face of them. *Per cur.*: This is all we can do, the other was never attempted before; and we must adhere to the court, by the articles to be true. Upon reviewing these articles, the court was of opinion, that the facts stated, were a sufficient ground for granting the peace of the
the peace, and securitie was given. Str. 1202. Lord

lane's cafe.

Robert Parnell having exhibited articles of the peace
against Sr Thomas Allen, Bart. and three others, an
attachment of the peace issued against them. Before ball
was put in, Parnell, in a passion that he had not read
the articles, and endeavour-

ed to explain them. Hereupon the council 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 clearly contradicted by five or six per-
fected, the peace was made to fly cause, why the articles
should not be reviewed, and that Parnell should attend
upon the day for seeing cause. He did attend, and the
court was, upon the whole, so satisfied of his having be-
ing guilty of perjury that he was immediately committed
for wilful and corrupt perjury; and a rule was made, that
all further proceedings upon the articles should stay.
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,
Sr Thomas Allen, Bart. and others, Hol. 32. Geo. 2.
As the articles of the peace having been exhibited, by John
Brown, against Hannah Bennett, and three others, a rule
was, upon reading the affidavits of the defendants, made
to fly cause, why these articles should not be reviewed.
In these affidavits it was sworn, that the defendants did
not keep the peace, as Brown the plaintiff, and, but
other strange facts sworn to, it was suggested, that
this was a contrivance of the defendant Bennett's hu-
band to oppose her. No cause being flown, the articles
were ordered to be taken off the file. MS. Rep. Rex v.
Bennett and others, Engl. 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 Symonds's cafe. M. 6 Jones
was cited. A mandamus was in this cafe granted. Str. 835.
Rex v. Lewis.

In a late cafe a motion of this kind was refus'd; and
by Denio J. such a mandamus has of late years been
granted but once, in the King and Lewis; and there
the court had great doubt, although the circumstances of
that cafe were very peculiar, as to the granting it. MS.
Rex v. Lewis, Hol. 32 Geo. 1. 229 Geo. 2. 1757.
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
to articles of peace exhibited in the court of King's
Bench, when he might have had the securitie of the peace
from his own peace, or from the judges, and it was the opinion
of the court of King's Bench many years ago, that this
mitchief, although not provided against by the enacting clause
of that statute, is within the equity of the 21 Jac. 1.
c. 8. 4. Ch. Ab. 691.

Upon a motion, on the behalf of Ruffell, to exhibit
articles of the peace against seven or eight persons, who
lived at Nottingham; Hol. Ch. J. said, Then we shall give
seven or eight persons the trouble to come up in put in
ball; why did you not go to the justices of peace in the
county? The complainant answered, I could not have
had justice there, they are relations. Hereupon the
motion was granted, fed hastanter. Comb. 427. Ruffell's
cafe.

It has not of late years been the practice, of the court
of King's Bench, to refuse the receiving of evidence of the
articles, where the charge contained in them is sufficient for
recovering the party of the peace: But it seems, as if that
court now come to a resolution of putting a stop to this
exception of the subjedt; for in a very late cafe, where a
motion was made by Borough, to exhibit articles of the
peace against Wait, the court, it appearing that
Wait lived at the Drovers, and that Borough had not
endeavoured to obtain securitie of the peace in the county,
unanimously refused the motion; and my Lord Mansfield,
Ch. J. said, Apply to the magistrates of the county, and if
securitie of the peace is not granted you, come here again.

When securitie of the peace is granted by the court
of King's bench, if a supersedes comes from the court of
chancery as a supersedeas to that court, their power is
at an end; and the party as to them discharged. Bri.
Peace, pl. 17.

3. Of granting securitie of the peace, by a justice of
the peace.

A justice of the peace may grant the securitie of the
peace, under the authority of the commissiion of the
peace, by which he is empowered to cause to come before
him all those, who to any one or more of our people,
concerning their bodies or the thing of their bouses have
used or threatened to use, or do use, or do threaten to use,
their good behaviour, towards us and our people; and
if they shall refuse to find such securitie, then in our
prisons, until they shall find such securitie, to cause to
be safely kept. Lamb. 36.

Whenever cafe is made before a justice of peace by
any person, 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
securitie of the peace through malice, but for the safety
of his life, the justice is bound to grant it. Lamb. 83.
F. N. B. 79. 1 Hen. 11. 3.

The securitie of the peace is designed against a peer,
the safest way is to apply to the court of chancery or
King's bench. 1 Hen. 11. 127. Lamb. 81.

If the person against whom it is demanded, be present,
the justice of the peace may commit him immediately,
unless he offers seuritie; and a forfeiut he may be com-
manded to find seuritie, and be committed for not doing

But if he be absent, a warrant for committing him
cannot be granted till a warrant has siffied commanding him
to find seuritie; and this warrant, which must be under
seal, ought to be flown for which it is granted; and at the
same time, Lamb. 83. 1 Hen. 1128.

The justice of the peace, who grants this last
mentioned warrant, may in this cafe 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 Ga. 59. Fryer's cafe. 1 Hen. 128.

But as 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 seuritie before such justice; for the warrant has these words in it, if he
shall refuse to find securitie. Cr. Br. Fisley instruct. pl. 11.

If one, however, who apprehends that the securitie of the peace will be demanded against him, finds seuritie
before any justice of the peace of the same county, either
before or after a warrant is siffed against him, he may
have a supersedes from such justice; and this shall pre-
vent or discharge him from an arrest, under the warrant
of any other justice, at the suit of the same party, for
whole securitie he has found such seuritie. Lamb. 95.
1. Hen. 128.

A supersedes may also be had, to a warrant granted
by a justice of the peace, upon finding seuritie in the
court of chancery or King's bench. F. N. B. 238.

But by the 21 Jac. 1. c. 8. par. 3. After reticul-
ing, that divers turbulent and contentious persons, deliberately,
feared to be bound to the peace or good behaviour,
by justices of the peace of the counties where they
shall, do offent against, or be themselves or others
bound to the peace or good behaviour in the court of chancery
or King's bench, upon sufficient seuritie, or upon colourable
prosecution of some person or persons, who will be ready
at all times to relieve them at their own pleasure; where-
upon his majesty's writs of supersedes are omninously
directed to the justices of the peace, or to the mayor of the
justice's officers, requiring them and every of them to forbear to
arrest
In support of a rule to play proceedings in a fire farce, upon a recognition for keeping the peace, it was said, that the assault, which had been made, was not upon him at whose request the force of the peace was granted, but upon another person. It was held that this makes no difference; and the rule was discharged. MS. Rep. Rev. v. Stanly, and his bril. Trin. 27 Geo. 2.

But a recognition for keeping the peace, is not forfeited, where an officer, having a warrant against one who will not suffer himself to be arrested, beats or wounds him in the attempt to take him. Lamb. 129. 1 Hawk. 130.

So it is not forfeited, if a parent in a reasonable manner chafes his child; a master his servant, being actually in his service at the time; a heel家住 his scholar; a large and gasler his horse; or a husband his wife. 1 Sid. 175, 177. Lamb. 127, 128. Hol. 149, 150. 1 Hawk. 150. F. N. B. 50.

And, without enumerating all the actual assaults, which a man may make upon the person of another, and not forfeit his recognition for keeping the peace, it may be laid down as a principle, that such a recognition is not forfeited by any assault which could have been justified in an action, or upon an indictment, for the assault. 4 Bot. Atr. 604.

It has been held that a recognition for the keeping the peace may be forfeited by any treason against the person of another, or by any unlawful assembly in terrorp rei. Lamb. 151. 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 recognition. Lamb. 115. 1 Hawk. 130. Cre. Ed. 56. 1 Hawk. 132.

A recognizance is likewise forfeited by threatening to beat a person who is absent, if the party, who has so threatened, does afterward lie in wait to beat him. Lamb. 115.

But it is not forfeited by words of heat or choler, as the exiling a man knave, liar, or rascal: For, although such words may provoke a lady 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 reinforcement farther. Cre. Car. 198. Rex v. Heyward, and his bail. 1 Hawk. 137.

Nay, it has been held, that a recognition for being a good behaviour shall not be forfeited for such words; and a forsi one for keeping the peace shall not. Cre. Ed. 35. King's case. Ms. 249. 1 Hawk. 130.

Such recognizance shall not be forfeited by a trefpass on the lands or goods of another, unless it is with force. Cre. Jat. 596. 1 Hawk. 131.

A man shall not forfeit a recognition for keeping the peace, who does a hurt to another in playing at cuigles, or such like sport, by consent; for these sports, which tend to promote activity and courage, are lawful. Dolt. 251. 1 Hawk. 131.

But he who wounds another in fighting with naked words, forfeits his recognizance, because no consent, nor even the command of the king can make it dangerous a diversion lawful. Bro. Car. 249. 1 Hawk. 131.

If a soldier hurts another soldier, by discharging his gun in playing without sufficient caution, it is no forfeiture of a recognizance for keeping the peace; for altho' he would be liable in an action for the damage occasioned by his negligence, this, it not being a willful breach of the peace, is not within the purport of the recognizance. 1 Hawk. 131. Hib. 134. 2 Red. Atr. 518.

A court of quarter-feelions cannot in any case proceed against the parties, for a forfeiture of a recognizance for keeping the peace; but the recognizance must be first in some of the King's courts in Wiltshire Hall. 1 Hawk. 137.

All proceedings upon a forfeited recognizance must be by fair facias, and not by indiction; because where a fair facias is brought, the parties have an opportunity of pleading any matter in their discharge. 1 Rall. Atr. 900. Peroo's case. Cre. Jat. 598. 1 Hawk. 130.
If the party who is bound to keep the peace dies, the securities may, upon showing this, be discharged from the recognizance. 50. 53. Halfhide's case.

So if the party who has required the surety of the peace dies, the recognizance may be discharged. 1 Lev. 27. 3. 1 Hawk. 126.

But the release of the party, at whose complaint it was taken, is no discharge of a recognizance; for as the recognizance is to the King and not to him, it is not in his power to discharge it. Bro. Pirie, pl. 17. Lond. 111.

A husband was bound to keep the peace for a year, upon articles exhibited in the court of King's Bench by his wife. A motion being made to discharge the recognizance, upon a foguigu at the wife was thereto con-

fessing, it was denied by the court: And for Hld. Ch. J. How id we discharge this recognizance, before the condition of it is performed. 11 Med. 169. The Queen v. Lord George Howard.

A release however from the party, at whose complaint it was taken, may, if no time for its continuance is men-
tioned in the recognizance, be an indulgence to a court to discharge it. 1 Hawk. 129. 11 Med. 169.

The demife of the King is a discharge of a recognizance for keeping the peace; for the condition being fer-

vate pacem nostram, his successor cannot take advantage of a breach thereof. Bro. Pirie, pl. 15. 1 Hawk. 129.

After such a recognizance is forfeited, the King may pardon it; but it must not be released, or the condi-

tion before it is broken; because the party, at whose complaint it was taken, has an interest therein. Bro.

Re-


It has been held, that, if a recognizance for keeping the peace is removed by a certiorari, the obligation to ap-
ppear upon such recognizance is thereby discharged. 2 Kol. Abr. 492. F. pl. 1. Dolt. 278.

But this would be highly inconvenient; and the bet-

ter opinion seems to be, that a certiorari is no discharge to the appearance upon such recognizance. Cris. Jac. 232. Ruffe v. Py. Vile. 207. 2 Hawk. 294.

No no where the continuance of a recognizance for keep-

ing the peace, is therein mentioned, it is perhaps in the power of the court, in which it was taken, or to whom it has been certified, to discharge it at their dis-

cretion. 4 Bat. Abr. 695.

The usual practice of a court of quarter-seions is to con-
tinue a recognizance for keeping the peace from se-

fions to seions, until the court thinks proper to dis-

charge it.

It is the constant course of the court of King's Bench, to take a recognizance for twelve months, and, if no in-
dictment is within that time preferred against the party bound to keep the recognizance, it may be the recognizance there-


This seems also to be the practice of the court of Chan-

cery; for, upon a motion to discharge a writ of for:

guli-
cant, it was refused; and by my Lord Macclefield, Chan-

cellor: This application is too early; let the party pay the money due, and be himself quilty all that time. 1 Hawk. 202. Clowier's cafe.

Surety of the good Behaviour. See Seco: Bfelae

viour.

Surgeon, (Chirurgus,) May be deduced from the French Chirurgien, signifying him that deals in the me-

chanical part of phylic, and the outward cures perform-

ed with the hand; and therefore is compounded of two Greek words, vins. 209, mams, emu, opu: And for this cause are not they allowed to minister inward medicine. Cowell, edit. 1727.

None to practice phylic or survery in London, unless admitted by the bishopp, or by the dean of St. Paul's, 3 Pr. S. 95.

Surgeons discharged of parish offices and justices, Ut.

in London, 5 H. 8. c. 6.

The surgeons incorporated with the barbers, 32 H. 8. c. 42.

Surgeons shall have their names over their doors, 32

H. 8. c. 42. f. 3.

Privileges granted to surgeons, 32 H. 8. c. 42.

The surgeons company in London separated from the

barbers, 18 Gr. 2. c. 15.

Surgeons of the army to be examined by examiners ap-

pointed by the surgeons company, 18 Gr. 2. chap. 15. fol. 62.

Sur lun. ut. Upon his oath. Leg. Hill. 1. c. 16.

Surmifte, is something offered to a court to move it, to

grant a prohibition, audita quære, or other writ grantable thereon, and which shall be allowed to be a good

forfeiture or not. See 2 C. 425. 519, 520. See Surg-

gelation, and 20 Fin. Abr. p. 111.

Surplufage, (Fr. Surplus, Lat. Surfugatio, Cordur-

atum,) 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 bad, and the

rebuke is then to be made to the party thereon. Huf.

Bricke. Plaice, c. 51. 125.

And on a writ of inquiry of damages in waffe, in which

the sheriff was commanded to go to the place waffed, and there to inquire of the waffle done and damages, who returned the inquisition, without mentioning that he went to the place waffed; this was held to be forplufage in the writ that would not hurt, because by the plea in the action the waffle was acknowledged, so that he need not go to the place waffed to view it. Poth. 24. A diftinguifh was returnable Tre Tri. Nij pruis venerit Matthew Hole, Mfl. Capital. Bars, &c. on such a day, eftiam necfit Junii: whereupon the court held, that this was moved in a reft of judgment as a discontinuance; but adjudged that the word eftiam shall be rejected as forplufage and void, and then the word Junii shall be intended fane next, as a covenant to pay money at Michaelmas, shall be in
tended Michaelmas next ensuing. Hard. 390. In a de-

claration for debt, upon demur, it was objected a-

gainft the declaration, for that the plaintiff avered the defendant had not paid prad. faguntia liberis, &c. When the word fagunto was not before mentioned: And it was resolved that it should be forplufage, then it is that the defendant had not paid prad. Hean, which must be the pounds for which the plaintiff had declared, 1 Law. 445. Crots. Elia. 647. 3 Nifl. Abr. 262. A plaintiff being right named through all the proceedings, but in the last place, where it was said that a capias utegutum was prosecuted against pradit. Johanan Fowler, and his true name was George: It was ruled, That the word fagunto shall not before be mentioned, and that the plea thereon, thereupon, be that a capias utegutum was prosecuted against pradit. Fowler. 2 Lutio. 919. 1 Lit. 420. If a jury find the fulblitude of the issue before them to be tried, other superfluous matter is but forplufage. 6 Rep. 46. See 20 Fin. Abr. 114, 319.

Surrender, Is a second rebut, or a retuming more than once. See Scholter.

Surrenderer, Is a second defence of the plaintiff's declaration in a cause, and answers the rejinderer of the defendant. Hift. Symb. part. 2. As a rejinderer, is the defendant's answer to the replication of the plaintiff; foo a rejinderer is the plaintiff's answer to the defendant's rejinder. Wood's law. 586.

Surrenderer, (Surfum-restitutis,) Is an instrument in writing, testifying with apt words, that the particular ten-

ant 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 same in possession, and that he yeilds and gives up the same unto him; for every fur-

renderer ought forthwith to give possession of the things forrendert. Wilt. Symb. part. 1. lib. 2. yol. 523.

where are several precedents. There may be also a fur-

renderer, to whom a remainder is granted before there is any re- münder in deed, and a furrenderer in law; a furrenderer in deed is that which is really and fenfibly performed. A furrenderer in law is in intention of law by way of con-

fiance, and not actual, See of this Perkins, cap. 9. fol. 469. As if there have a leave or man to be the acceptor of a new leaf, this allis in law a furrenderer of the former. C. 6 Rep. fol. 11. There is
is also a customary surrender of the copyhold land, for which see Cave sop. Littleton, fol. 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, edd. 1727.

See 20 Vin. Abr. 119—140.

Surgogate. (Surrogatus.) One that is substituted or appointed in the room of another, must commonly of a bishop, or of a bishop's chancellor. Cowell, edd. 1727.

Sutcliffe, (Superflua,) mentioned in flat. 32 H. 8. cap. 48. Seems to be an especial name used in the caitle of Dover, for such penalties and forfeitures as are laid upon those who pay not their duties or rent to Constable at their days due. Bracton, Bract. 2, and this it in a general specification, lib. 5. tract. 3. in Print. 

Superexcipr, (Superuvius,) is a French word compounded of jur, super, and vus, curare, vedere. It signifies with us, one that has the over-seeing or care of some great person's property or concern. Coke, 2 and 3. the second general or of the King's manors. Camp. Jur. fol. 39. And it is here it is taken in flat. 33 H. 8. cap. 39, where there is a court of superexcipres erected: And the superexcipres of the wards and liberties. But he is taken away with the court of wards and liberties, by the statute made anno 12 Car. cap. 24. Cowell, edd. 1727.

Superfew of the King's Exchanges, (mentioned in flat. 9 H. 5. flot. 2. cap. 4.) was an officer whose whole name signifies in these days to be changed into some other; for there is none such now, or else the office is now done. Cowell, edd. 1727.

Superjacent, (Superjacent,) is taken from the French superjacent, super. Signifies the lower liver of two joint-tenants. Id. ib. See Joint-tenants, and 20 Vin. Abr. 140—150.

Suspension, (Suspensio.) is a temporal fall of a man's right; as when a leguitor, rent, &c. by reason of the unity of possession thereof, and of the land out of which they issue, are not off for a time, &c. tone damnum, 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. en Litt. lib. 3. cap. 10. sect. 559. Suspension is also used sometimes by us, as it is in the Canon law pro minoris excommunicationis, flat. 24 H. 8. cap. 12. Suspension ab eis. And when a minister for a time is declared unfit to execute his office, Suspension a beneficio is when a minister for a time is deprived of the profits of his benefice. Cowell, edd. 1727.

Suspicius, (Suspicius.) A person may be taken up on suspicion, where a felony is done, &c. but those who are im- posed upon by false suspicion have no security for the decision, they are bailable by statute. 2 Harg. 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, not upon that of another; and he must have reasonable caules of it, &c. 2 Hals's Hist. P. C. 78. See 20 Vin. Abr. 150—155.

Suspictus, (Lat. Suspicatus, i. ducere suspectum,) Seems to be a spring of water passing under the ground toward a conduit or cistern. Stat. 33 H. 8. cap. 10. Cowell, edd. 1727.

Sufficere, Its finite close, where to be held, 19 Hen. 7. c. 24.

Suffrurre, The South door of a church. It is mentioned in Gerso. Dorb. de repartitione Cantaur. Ecclesiæ, and it was the usual place where canonical purgation 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 Judicium Dei, and so was the vulgar purgation, which was by fire or water. It is for this reason that porches are built at the South door of the church. Cowell, edd. 1727.

Suffrutcitious, (Lat. Suffrutcitius, i. ducere temporis,) Is a noble bird of game; and a person may prefer to have game of fowens within his manor, as well as a warren or park. 17 Rep. 17, 18.

None shall keep a game of fowens unless he have lands of the yearly value of five marks, 32 Ed. 3. c. 6. Persons taking their eggs out of the nett, &c. have punished on the same. 1 Hen. 7. cap. 13. 11 Hen. 1. c. 57. sect. 2. See Ctme.
S W E

Sect. 5. In case any common folder in his majesty's service; or any common folder or seaman be convicted of profane cursing or swearing, and pay not immediately the penalty, or give good security for the same, and the completion of the information, summons, and conviction, instead of being committed to the house of correction, he shall be publicly set in the fleeks for one hour, for each word, or degree of offense, whereof he is convicted at the same time, two hours.

Sect. 6. If any justice of peace, mayor, or other chief magistrate of any town corporate, wilfully omit the performance of his duty in the execution of this act, he shall forfeit 5l. one moiety to the use of the informer, and the other moiety to the use of the poor of the parish wherein he refiiles; to be recovered in any court of record at Westminster, wherein no effain, &c. shall be allowed.

Sect. 7. If any unjust, petty confable, tythman or other peace officer, wilfully omit the performance of his duty in the execution of this act, and be convicted by the oath of one witness, before any justice of peace, or before the mayor or other chief magistrate of any town corporate, he shall forfeit 40s. to be levied by diftefts and sale of goods, by a warrant of such justice or chief magistrate; and to be disposed of, one moiety to the use of the informer, and the other moiety to the use of the poor of the parish whereof offence is committed; and in case such offender have not sufficient goods wherein to levy the penalty, he shall be lawful for such justice, &c. to commit such offender to the house of correction for any county or place, to be kept to hard labour for one month.

Sect. 8. Justices, mayors, or other chief magistrates before whom any person is convicted of profane swearing or cursing shall cause the conviction to be drawn up in the form following.

Middlesex, 

I BE it remembered, That on the —— day of —— 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) of swearing 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 fame to be written upon parchement, 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 amongst 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 justice or chief magistrate be rated, and pay to the relief of the poor of any parish or place where any offence is committed.

Sect. 10. All penalties inflicted by this act, for profane cutting and swearing, shall be disbursed 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 aforesaid 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 ever pay therefor for the space of six years, it shall be lawful for the justice, &c. 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 cafe no charges of information and conviction shall be paid by any person.

Sect. 11. If any action be commenced against any justice, constable, or other person, for doing any thing in pursuance of this act, concerning the said offences, the defendant may plead the general issue; and if verdict be given for the defendant, &c. he shall have treble costs.

Sect. 12. No perfon shall be prosecuted or troubled for any offence against this statute, unless the fame be proved or prosecuted within eight days after the offence committed.

Sect. 13. This act shall be publicly read four times in the year, in all parish churches and public chapels, by the parson, vicar, or curate, immediately after morning or evening prayer, on four Sundays, viz. the Sunday next after the 25th of March, 24th June, 29th September, and 25th of December; or in case divine service be not performed in any such church or chapel on any of the Sundays herebefore mentioned, then upon the first Sunday after any of the said quarterly days on which divine service is performed, under pain of forfeiting 5l. for every neglect; to be levied by diftefts and sale of the offender's goods, by warrant of any justice or any other chief magistrate.

Sect. 14. The clerk of the justice, mayor, bailiff or other chief officer, before whom proceedings upon this act shall be had, may take the information, summons and conviction of every offender 11. and no more.

Sect. 15. The 9 Jue. 1. 12. and the 6 £ & 7 W. 3. c. 11. shall be repealed.

Sect. 16. The penalty of concealing sweets, 2 & 8 W. 3. c. 30. f. 16.

To what duties liable, q & t 10 W. 3. c. 23. f. 3. 10 £ & 11 W. 3. c. 21. f. 7. 3. 4. 5 Ann. c. 19. f. 5.

What to be deemed sweets, and who the makers thereof for sale, 10 & £ 11 W. 3. c. 21. f. 5.

Sweets to be removed without a permit, 6 Geo. 1. c. 21. f. 22.

A lease duly laid on sweets, and extended to make wines, 10 Geo. 2. c. 17. f.

Wines of British grapes exempted, 10 Geo. 2. c. 17. f.

Made wines not to be retailed without licence, 10 Geo. 2. c. 17. f. 10.

Retailers of sweets or made wines to take out licences, 35 Hen. 8. c. 17. f. 17.

For keeping wine in London, &c. 2 W. & M. c. 2. 8. fol. 20. 8 & 9 H. 3. c. 37. fol. 4. See Cattle.

Swallow, or Selling of Land, Suliga, Sulina, vel Swoliga terra, in Saxum Sulign, from Jol tv Juf, ara- trum; 35 to this in the western parts, a plough is called a Salt, and a plough-hill, a Salt pill. It is the same with Cornetca 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. See Wendall, edit. 1272.

Swold-hils, Silver sword-hils may be exported, 9 & 10 H. 3. c. 28.

Swold-Brothers, (Fraterius jurat.) Persons who by mutual confent covenanted to share each other's fortune. In any notable expedition to invade and conquer an enemy's country, it was the custom of the more eminent fathers of fortune, to engage themselves by reciprocal oaths to share the reward of their service. So in the expedition of Duke William into England, Eade and P尼斯 were fawen brothers, and co-partners in the estate which the conqueror allotted to them. So were Robert de Olby and Roger de Leri. Paroch. Anit. 57. No doubt this practice gave occasion to our proverb of fawen brothers, and brethren in iniquity, because of their dividing plunder and spoil. Cowell, edit. 1777.

Swin Gnarda, Wood under twenty years growth; Coppice-wood. See the statute 45 E. 3. cap. 3. It is otherwise called in Law-1rench Sulibeis. 2 Jf. fol. 642. See Ethers.

Symbolum,
Symbolum. (Gr.) Is the apostles creed; in Latin Collatio, because the catholic faith was by them in unum collatem: It is often called by this name in our historians. Cowl, edit. 1777.

Spiccpars. To cut his words short, to pronounce them fo as not to be underflood; the word is used in feveral of our ecccfifcal councils and fynods. Ibid quod ex foliamentis nimia verba non praedictatur vel punctentur. Concilia Sarbi. cap. 20. Synod, Wigfr. cap. 10.

Synodites, A patron or advocate: It is mentioned in Math. Paris, anno 1245. Synodus omnium clericorum terrae sanctae, &c.

Sych, (Synodus,) A meeting or affembly of ecccfifical persons concerning religion, of which there are four kinds: 1. General, where bishops, &c. meet of all nations. 2. National, where thofe of one nation only come together. 3. Provincial, where they of one only province meet. 4. Diocesan, where thofe but of one diocfe meet. Convocation is all one with a fynod, only the one is a Grecch and the other a Latin word. Our Saxon Kings usually called a Synod, or mixed council, confluting both of eccfifical and feudal noblety, three times a year, which was not properly called a Parliament till Henry the third's time. Cowell, edit. 1727.

Synodal, (Synodale,) Is a tribute in money, paid to the bishop, or archdeacon, by the inferior clergy at Efter vifitation; and it is called Synodale quin in fynodis frequentius datur. See Historical dictionaries of Premonstratens and Synodals, p. 66, &c. There are called otherwise Synodals in the statute of 32 Hen. 8. c. 16. Yet in the statute of 25 H. 8. c. 19. Synodale Provincialem ferve to signify the canons or confiftuents of a provincial fynod. And sometimes synodale is used for the jufiiment. See Dug. Historical. lib. 12th. and Speaker of Cowell, 1 Tom. p. 329.

Synodales teftes, The urban and rural dears were at first fo called, from informing and attefting the diforders of clergy and people in the epifcopal fynod. But when they fprung in their authority, the synodales witneffes were a fett of impofed grand jury, to inform of or preswnt offenders, a fett and two or three laymen for every parriff. At laft two principal perfons for each diocfe were annualy choft, till by degrees this office of inqelft and information was devolved upon the churchwardens. See Kennet's Parish. Antiq. 64. synodale juramentum, was the fettum oath taken by the faid Synodals, as is now by churchwardens to make their prefemtments. Cowell, edit. 1727.

TAL

T. or provifion of meat and drink, were sometime called bord-bord rents. Cowell, edit. 1727.

Tabling of fines, Is the making a table for every county where his majefly's writ runs, containing the confines of every fynod prefixed in any one term; as the name of the county, towns and places wherein the lands or tenements lie; the name of the demandant; and defcorrent, and of every manor named in the fynod. This is to be done properly by the chirugographer of fines of the Common pleas, who every day of the next term, after the interest of fines, much as Tail special, is paid tables in some open place of the faid court, during its fitting. And the faid chirugographer is to deliver to the fheriff of every county, his under-fheriff or deputy, fair written in parchment, a perfect content of the table so made for that fhire, in the term next before the affixes for that county. And it is common for the fheriff to be set up every day of the next affixe, in some open place of the court, where the defcorrents of fines shall then fit, and to continue them during their fitting; And if either the chirugographer or the fheriff fail herein, he fhall be guilty. And this chirugographer's fete or fee being fuch taking is four pence, 3 Ed 4. and High, Synod, part 2. tit. Fines, feft. 120.

Tabula See Clubmonitoriae.

Tail. (Talium, from the French word TaUl, i. e. tenua, from taliere, to cut or limit,) Signifies two several kinds both belonging upon the one hand to the county, and on the other hand to the county, or to the county and the king. 251. William's cafe. First, it is used for the fir, which is opposite to fee-simple, by reafon it is so inclosed or parted as it were, that it is not in the owner's free power to dispose of it, but is by the fir hereditary or divided from all others, and tied to the fervice of the donee. Lib. 4. in Preston. And this limitation of tail is either it is personal or special. Tail general, is that whereby lands or tenements are limited to a man, and to the heirs of his body beotten; and it is so called, how many wives ever the tenant holding by this title shall have, one after another, beinfen the family by them all have a poftibility to inherit one after another, and that is, when lands or tenements are limited to a man and his wife, and the heirs of their two bodies begotten; 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. Etc. Also if land be given to a man and his wife, and to their fon Thomas for ever, this is Tail special. Cowell, edit. 1727. See Clublate, and 20 vin. Abr. tit. Tail.

Tail after poftibility of issue extend, Is were land is given to a man and his wife, and to the heirs of their two bodies begotten, and one other without issue between them begotten; he shall hold the land for his term of his own life, as tenant in Tail after poftibility of issue extend, and notwithstanding that he doth walk, he shall never be impeached of it. And if he alien, he hath the revolfion, that he have not a writ of entry in commonfield cafe, but he may enter, and his entry is lawful; by R. Thorpe Chief Justice. 28 E. 3. 66. and 55 E. 3. 34. Latiff. (Attinilus, Fr. Tenique, i. inferius,) And signifies subfequently, either a conviction, or adjectively a person convicted of felony or treason, &c. See Attainant.

Tailors. (Lat.) Is used in our law for a supply of men impanelled upon a jury or inqueft, and not appearing, or at their appearance challenged by either party as not indifferent; in which case the judge, upon motion, grants a supply to be made by the fheriff of one or more such three present; and hereupon the very act of supplying is called a tail and will be paid for by him that bears who is called a Tailor, either upon default or challenge, may not have another to contain fo many as the officer: For the first Tailors must be under the principal panel, except in a cafe of appeal, and so every Tailor lefts as other, and is allowed to abide until the term be present in court, and such as are without exception, as appears by Stannard, Pl. Cor. lib. 3. c. 5. These commonly called Tailors may in some form, and indeed are called Aligners, vis. When the whole jury is challenged, as appears by Esq. tit. Q. 8 O. Tales,
Tales, &cetera Tales, fol. 105. See Ca. lib. 100. fol. 99. Br wey's cafe. See Jutty. Tales, is also the name of a book in the King's lib. office, of such jurymen as were of the Tales. Ca. lib. 4. fol. 93. Tallage, (Tillageium.) May be derived of the French Taller, which 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 tallaggio non concedendis temp. E. 1. and Smith's Annuals, p. 455. Thence our tallagers in Chancer for tax or tallagiers. See Tallage. Tallage pays Cape, is a general word for all taxes. 5 Inst. fol. 352. But tenants 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. Tallagiers, possibly, give up accounts in the Exchequer, where the method of accounting is by tallies. Cowell, edit. 1727. Tallcy, (Tallia, Fr. Talle, Ital. Taglia, i. e. fide). A thick cut in two parts of every book, on 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 statutes, 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 to the King such things as are by their charter granted to them in tenor, viz. 51. at the Annunciation, and 51. at Michaelmas. He that pays these sums, receives for his discharge a tally at each day, with which both, or notes of the time, he repays to the clerk of the pipe office, and there instead of them, receive an acquittance in parch- ment for his full discharge. The other are tallies of revenue spoken of 27 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 matters as they have cost upon their account, but cannot be or. See 2 & 3 E. 6. cap. 4. Cowell, edit. 1727. See 20 Vin. Atr. 156. Tallia, Every canon and prebendary in our old cathedral churches, had a fided allowance of meat, drink, and other distributions, to be delivered to him for mithum tallia, viz. for victuals or for allowance, in meat or drink, was called tallia. Cowell, edit. 1727. Tallia, Prohibited to be exported, 18 El. c. 13 & 14 Car. 2. cap. 7. sect. 5. Tallow, to what duties liable importation is, 5 Wld. & Mon. feip. 2. cap. 5. & stat. 36. May be imported from Ireland duty free, 32 Geo. 2. cap. 7. which is extended to the following statute, 1 Geo. 2. c. 18. and continued by 4 Geo. 3. c. 6. Tallia, (Tallia, or Tallia, (Tallatura.) Is firewood, cleft and cut into billets of a certain length. Stat. 34 & 35 H. 8. cap. 3. and 7 Edw. 6. cap. 7. This was antiently written tablia. Cowell, edit. 1727. Tallia, In nature of a grain tallai, being where a man presumes for as much as is due to himself, on an information for breach of some penal law, whereby every penalty is given to the party that fails. Terms de Leg 556. In every case where a statute prohibits a thing, and doth not annex a penalty to the committing thereof, the party offending may be indicted for a contempt against the statute: or action lies against him for breach of it, which must be brought tam pro domina Rege, quam pro injusto, as there is a fine to be paid to the King. 2 Inst. 118. Castr. Ed. 655. Castr. 134. In action popular, brought tam quam, the King can do nothing, but his own part, and not that of the defendant; but if before action was obtained, the King may discharge the whole. 3 Inst. 238. See Nation, Information, Aut tam. Tangier, An ancient city of Barbary, lying within the kingdom of Fez, mentioned in the statute of 15 Car. 2. cap. 7. It is a yearly part of the common be- longing to the crown of England. Tangier not to be defined a plantation, 22 & 23 Car. 2. c. 76. Taxes
T E I

Taxed granted to the King shall not be drawn into
benefices.
Aid shall not be taken but by common assent, for
benefices.
No tax shall be aid shall be taken without common
assent.
Aids granted to the King shall be levied after the old
manner, 1 Ed. 3. 2. 6.
Imposts shall not be put upon staple merchandise
without assent of parliament, 45 Ed. 3. 4. 4. 11 R. 2.
Goods shall be charged to a fifteen, where they were
at the time of granting, 9 H. 4. 7.
A collector of fifteen shall have debt against his com-
patriates for what he shall pay in their default, 9 H. 5.
5. 2. 6.
A collector in a city shall not be appointed in a
county, unless he has lands of the value of 5l. a year,
16 H. 6. 5. 2.
Subsidies granted, 31 H. 6. 5. 8. 11 H. 7. 5. 10.
The subjects shall not be charged with any charge in
nature of a benevolence, 1 R. 3. 2. 2.
Collectors of publick money may plead the general
issue, 13 & 14 Car. 2. 6. 17.
A tax laid on goods in trade, 1 Ann. fl. 2. 6. 15.
Duty on places and pensions, 31 Gen. c. 2. 22.
Military offices exempted, 31 Gen. c. 2. 23. 24.
Duties on tobacco, 31 Gen. c. 2. 25. 26.
Offences against acts for paying land tax, exc. exempted
out of general pardon, 2 Gen. c. 4. 52. f. 28, 35. 29.
See 20 Fin. An. 157—102.

L F D

Lettart, (also) Lettsome. An imposition laid upon corn
Lettart, (also) Lettsome. The valuation of ecclesiastical
beers, paid by every diocese in England, on oc-
casion of the pope's granting to the King the tenth of all
spirituals for three years. Which taxation was made by
Walter bishop of Norwich, delegated by the pope to this
office in 38 Hen. 3. and obtained till the 9th of Edw. 1.
when a new taxation amounting to the value, was made by
the bishops of Winchester and Lincoln. Cowell, edit. 1727.

Lettars, Two officers yearly chosen in Cowbridge,
to see the true price of all weights and measures: The
name took beginning from taxing or rating the rents of
houses, which was anciently the duty of their office.
Id. 16.

Layton, regulations of journeymen tailors in London,
7 Geo. i. fl. 1. c. 13.

Lett, Duties granted on coffee, tea, chocolate and
froces, &c. 6 & 7 W. 3. c. 7. 3 & 4 Ann. c. 4. 5. f. 10.
Ann. c. 4.

Lett, Inland duties imposed on coffee, tea, and chocolate,
10 Gen. c. 1. c. 10. Penalty of counterfeiting mark, levias.
f. 22.

Penalty of adulterating tea, 11 Gen. c. 1. c. 30. f. 5.

4 Geo. 2. c. 14. f. 11.

Tea to be imported only from the place of growth,
11 Geo. 1. c. 30. f. 8.
The land duties on tea altered, 18 Geo. 2. c. 26.

Drawback on tea taken off, 18 Geo. 2. c. 26. f. 5.
India company may import tea, by licence, from Eu-
ropian ports, 18 Geo. 2. c. 26. f. 10.

Tea may be imported to Ireland and the plantations
without paying inland duty, 21 Geo. 2. c. 14.

Tea above fixed pounds in British ships come from abroad,
and not employed by the India company, forfeited, 28
Geo. 2. c. 31.

Leam & Leanne, (From the Saxon Tyman, i.e.
Percham, to seem or bring forth,) Signifies a royalty
granted by the King's charter to the lord of a manor,
for the having, retaining and adjudging bond-men, neis
and villains, with their children, goods and chattels in
his coast. Tyman in Saxon signifies also advocate.
Cowell, ed. 1727.

Leodspenny, (also) Leaspey. A small tax or allowance to the thrifft
from each thirft, towards the charge of keeping courts, &c.
from which duty some of the religious were exempted by
express charter from the King. Cowell, edit. 1727.

Leitland, Leitland, Leitland or Thallanda, As if
we should say the land of a Thall or noble person.
According to ancient, Land held by knights service
was called Thalland, and held in fee, Residuall
Co. or in fesu. 117.

Leffler, or Lefler, officer of the exchequer, of which there are
four; whole office is to receive all monies due to the
King, and to give the clerk of the petty a bill to charge
him therewith. They also pay to all persons any money
payable by the King, by warrant from the auditor of the
receipts, and make weekly and yearly books, both of their receipt,
and payments. Company, of which is the lord treasurer. Cowell, edit. 1727.

Leliographia, Are written evidences of things past:
It is compounded of the Sax. Telian, dicere, and of the
Greek τῆς επιγραφής, to speak any thing by writing.
cov. 1727.

Letvers, That is work or labour which the tenant
was bound to do for his lord for a certain number of
days: From the Sax. Taltian, tullare, and tovs spou.
It is mentioned in Town, Ann. 1504.

Lenente of Elmuntate, A tax of two Shillings

Temlars, Knights of the Lejeune, (Templar),
Was a religious order of knighthood, instituted about
the year 1119, and so called, because they dwelt in part
of the buildings belonging to the Temple at Jerusalem,
and not far from the sepulchre of our Lord. They entertain-
ed Christian pilgrims and pilgrims particularly 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 Quintus, anno
1307. by the council of Vienna 1312. and their
challenece given publickly at Rome. They were afterwards
Binded by the kings of Jerusalem and France, partly to other religious
Caflon de g. gloria manc. &c. Confl. 4. and
See Ann. 1 Edw. 1. cap. 24. These
flourished here in England from Henry the second's days,
till they were suppressed. They had in every nation a
convent, and from Oxford, ib. cap. 10, calls
Magilumph Militia Templi. The master of the Temple
here was summoned to parliament, 48 H. 3. m. 11. in
Schedule. And the chief minister of the Temple church
in London, is still called Master of the Temple. Of these
knights read Mr. Dugdale's Antiquities of Warwichshire,
1796. and the records they were also called Fra-
554. 4. About nine years after their instituition, they
were ordered by a council held at Trier, to wear a white
garment, and afterwards in the pontificate of pope Eup-
genius, they were a red crose on their garments. The
Temples, which we now call the sons of Gartis, was the
place where they dwelt, and in the Middle Temple the
King's treasfor was kept. Cowell, edit. 1727.

Templars land shall be forfeit for creatung their crostes,
St. W. 2. 13 Ed. 1. c. 33.

The juridiction of the conservators of their privileges
referred to, St. W. 2. 13 Ed. 1. c. 33.

The lands of the Templars given to the hospitals of
Jerusalem, St. de terr. Templ. 17 Ed. 2. b. 3.

Compuoyalties of Bishop's, (Temperalay Episcoporum)
Are such revenues, lands, and tenements, and lay-fees,
as have been laid to bishop's fees, by Kings and other
perquisites of their sees, of which men do, as they are
barons, and lords of the parliament. See Spiritualia of
Bishops. From the 31 E. 1. to the time of the reforma-
tion, 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 said temporalties by virtue
of any paper, other than this, and no rights of the right
and title of any one sovereign, except of them only owing to the
King's bounty. This practice has been in the occasion of a bull of pope Gregory 8. which corrected
the fee of Warreker upon William de Gaugorborne, and
committed to him Administration spiritualia & tempora-
triunum.
To whom a tenor may be made; and what is a good tender.

1. By whom a tenor may be made; and what is a good tender.

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 Hyt. 928.

A tenant, who is liable to a writ of ecclasis, must, if he would prevent the land from recovering is land, in person tender his rent, which is in arrear. Bro. Tend. pl. 29. Term of a Y. 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 the feoffor to alienate his heirs to enter, and if the feoffee dies before the money is paid, no tender can be tendered him or her executrix 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. 21 Rep. 208.

If a feoffment is made, by a tenant or by a stranger, on the behalf and by the desire of the party, it is as good as if made by the party himself. Cre. Etc. 48. Corp. v. Hamilton.

Wherever the right of tendering is not personal, a tender may be made by any person, who is a privy to the party in whom it originally was. Lath. 107. 7 Rep. 13. 1 Hyt. 269, 267, 208.

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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. *Comb.* 357. *Dixon v. Hillibrg.* 1 *Lfs.* 207. *Sull.* 440.

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. *Lot.* 84. *Ward v. Ridggen.*

If money is made current by proclamation at a higher rate than its intrinsic value, a tender in such money according to the value it is current at, is good. 5 *Bat.* *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 value of current of all other coins in that kingdom. It was held that a tender made in this money was good. *Deo.* 18. *The Cafe of Mixed Money.*

But if the money, which has been tendered, becomes afterwards current at a lesr value, than it was current at when the tender was made, the party who refused to accept it must bear this loss. 5 *Bat.* *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 one guinea and a half, and that he yet is ready to pay the rent in the said pieces 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. *Dyer* 81. *Barrington v. Putter.* *Dtv.* 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. *Wade's cafe.* 1 *Lfs.* 208.

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 *Lfs.* 288.

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 now refuse to receive it. *Mos.* 114.

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.* *Cafes* *Abr.* 319. *Austin v. The Executor of Dowlutt.*

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 *Bat.* *Abr.* 6.

2. *At what place, and at what time a tender must be made.*

If the contract is, that money in groats, or rent illuing out of land, shall be paid, or that goods shall be delivered, at a place certain, a tender can only be made at such place. *Bac.* *Tnd.* pl. 17. *Bac.* *Cond.* pl. 17. *1 Lfs.* 210. *Press.* 149.

If no place is appointed for the payment of money in grots, 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. *Bac.* *Tnd.* pl. 17. *1 Lfs.* 210.

So, in the payment of money due upon a mortgage, it was formerly held, that this, which is to be considered in grots, and collateral to the title of the land, must, if no place is appointed for the payment thereof, be ten-
TEN
tered to the person, if he is within England. 1 Inf. 210.

But it has been held in the court of Chancery, that a tender to the person is not in such case necessary.

A mortgage, or a tender of the mortgage was in possession under a forcible sale, or mortgage, went to the mortgagee's house with money sufficient to redeem the estate, 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 Chinn. Ca. 29. Mises, 1807, 211.

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 £100; and all interests due thereon, in Lincoln's Inn Hall, and a tender was accordingly made, it was objected, that no place being appo

The mortgagee's 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 him, it would be very hard to compel the mortgagee to travel with this great sum of money to Oxford where the mortgage lives. 1 Will. 378. Gyles v. Hall.

If no place is appointed for the payment of rent inquiring out of land, a tender upon the land is good, for it is not in this case necessary to tender to the person, for the purpose of being received. 1 Inf. 49. C. & Tend. pl. 18. pl. 38.

But although a tender to the person is not, in the case of rent inquiring out of land, necessary, a tender made to the person would be good. 2 Ves. L. 253. Gray v. Hamilton.

If any special corporal service is referred in a grant of land, this, although inquiring out of land, must be tendered to the person of the grantee; and the tenant must seek him to whom it ought to be done, if he is within England. 1 Inf. 210, 211. Br. Tend. 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 to that place, it is a good tender. 1 Inf. 210.

Every tender, whether it be given by the Common law, or by statute, must be made before an action is commenced. 1 Ves. 29. 21 T. 6. c. 16. f. 5.

In cases where the defendant pleaded that he tendered amends before the action commenced, to wit the 2nd day of October. The plaintiff replied, that, before this tender he had paid out a lawsuit, rsle the last day of the preceding Trinity term, and had thereupon posted the defendant to be arrested, and he denied that tender took effect. For a tender, after the failure of an original writ, comes too late. 2 Ves. 264. Watt v. Baker.

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 Br. Ast. 7.

A defendant pleaded a tender on the 4th day of May ante diem exhibita bile. The plaintiff replied non obstante ante diem; and, in order to oust the defendant of the benefit of his tender, made up the paper book with a general memorandum. As by this means the writ would have 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 plaintiff should make his memorandum specific to the time of finding out the writ. 6 Br. T. 18. Smith v. Key.

A tender was pleaded to have been made, on the 1st day of November. The plaintiff replied an original note the second day of November. Upon application of the defendant, the court of Chancery ordered the note of the original to be altered, from the 2nd day of November, the common title of an original returnable on the 2nd day of St. Hilary, to the sixteenth day of January, on which day the instructions for the original were left with the curator. 2 Barn. 289. Hill v. Williams.

In trespass for damage for a tenant must be made before the 1st day of the month, and be delivered, with training and impounding them. 2 Inf. 127. 5 Rep. 147.

If the tender is made before the beasts are detained, the detaining them afterwards is unlawful. 5 F. N. 6. 1 Inf. 127. 5 Rep. 147.

But a tenant is not good after the beasts are impounded; for as they are then in custodia legii, the party who detained has no power to deliver them. 5 Rep. 76. Hillingston's case. 2 Ves. L. 182. 5 Rep. 147.

If a tenant's beants are impounded, of which only one of them is impounded before a tenant is made, such tenant is not good. 2 Ves. 626. Aluwair v. Brown.

But, after the right of making the different has been tried in replie, the plaintiff in this action, notwithstanding there is judgment of return irreplevina for the avowal, may tender the damages awarded, and if his cattle are not therewith delivered, he may have an action of detinue for them. 5 Rep. 147. 1 Inf. 127.

If money is to be paid, or goods are to be delivered, at a place certain, upon or before a day certain, a tender cannot be made before the last day appointed for the payment of the money, or the delivery of such goods. 1 Inf. 211. 2 Ves. L. 212, 213. Br. Tend. pl. 45. 5 Rep. 114.

A tender and transfer of flock was made at the utmost convenient time, before the lodging of the books at one, which was the usual hour for lodging the books of that flock: But, the party who had contracted for the flock, not being there to accept and pay for it, the transfer was vacated before the books were shut. As there was more business that day, than could be transacted in the morning, the books were opened again in the afternoon; and several transfers were made. Upon the trial of an action, brought for the money which was to have been paid on transferring this flock, the jury found for the plaintiff. But a new trial was granted. Upon the second trial, which was at bar, it was held by the court of King's Bench, that this tender was not good: For that the general rule, that a tender must be at the utmost convenient time of the day, ought not to be broken through, except for such reasons as will sufficiently appear. There was no necessity to do this, because, as the books were opened in the afternoon, and the defendant might have been then ready to accept and pay for the flock, the tender ought to have been made at the utmost convenient time before the lodging of the books for that day. 2 Ves. 283. Br. Tend. pl. 15. 5 Decr. 345.

If money is to be paid, or goods are to be delivered, at a place certain, notice, although no time is fixed for such payment or delivery, may be given to the party, to whom the payment or delivery is to be made, that the money will be paid, or the goods delivered, upon a day therein mentioned to be a little after the utmost convenient time of that day will be good. 1 Inf. 211. 5 Decr. 354.

If a man is bound to pay 20l. at any time during his life, at a place certain, the obligor cannot tender the money when he will, for then the oblige would be under a necessity of perpetual attendance: But, if he gives notice to the obligee, that upon a day certain he will pay the money, a tender at the place at the utmost convenient time of that day will be good. 8 Rep. 92. France's case.

Although no time is fixed for the payment of money, or delivery of goods, if the party, who ought to pay the money, or deliver the goods, at a place certain, accidentally meets the party, to whom such payment or delivery ought to be made, at the place, he may tender the money or goods. 1 Inf. 203, 211. 5 Rep. 114. 2 Ves. L. 14.

For more learning on this subject, see 20 Vin. end 5 Br. Abr. tit. Tender.
TEN

Tenement. [Tenementum] Signifies properly a house or home-fall; but more largely it comprehends not only a house, but all corporeal inheritances illuing out of, or exercisable with the same. 

"But a tenement may be said to be any house, land, rent, or other thing, for life or in lying Waste." 

[Editorial note: This definition was likely intended to be part of a larger discussion on tenements and their classification within feudal or common law systems.]

[Content continues with detailed legal definitions and historical references related to tenements and their various classifications within feudal law, including references to ancient common law cases and statutes.]

TEN

Tenente pecuniarum. The tenant of these premises, is the matter contained therein, or rather the true intent and meaning thereof, as to do such a thing according to the tenor of a writing, is to do the same according to the true intent and meaning thereof. 

[Continuation of discussion on tenements and their implications in legal and historical contexts, with references to specific statutes and cases.]
Lands coming to the crown by forfeiture, &c. not to be held in capite, 1 Ed. 6. c. 4.

Fines and forfeitures for alienation taken away, 1 Car. 1. c. 3.

Tenure in Brantford and Lisle, in Denbigh, confir'd, 3 Car. 1. c. 6.

Certain fines and forfeitures to be free and common fagges, 12 Car. 2. c. 24.

Savings of rents, certain heritis, &c. 12 Car. 2. c. 24.

Not to take away frankaldon, copyholds, &c. 12 Car. 2. c. 24.

Not to infringe any title of honour by which any person may have a right to fit in the lord's house, 12 Car. 2. c. 24. f. 5.

Tenure in ward-holding, &c. in Scotland, taken away, 2 Geo. 2. c. 50.

For bearing on this subject, see 20 Vin. and 5 Buc. Abr. tit. Tenure.

**Tenures,** (Tenures or Tenures) signifies commonly the limitation of time or estate; as a lease for term of life or years, &c. Draft. lib. 2.

**Tenures,** (Tenures or Tenures) is he that holds lands or tenements for term of years or life. Tit. 100. A termor for years cannot plead in assize like tenant of the freehold; but the special matter, viz. his lease for year, the reversions in the plaintiff, and that he is in possession, &c. Dyer 245. Jenk. Cent. 142.

**Tenures.** Are those spaces of time, wherein the courts of justice are kept for all that complain of wrongs or injuries, and seek their rights by course of law or action, in order to their receipts; and during which, the courts in Writs of Error-half day and give judgments, &c. But the high court of parliament, the chancery, and inferior courts, do not observe the term or term 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 fortnight after Easter day, and ends the Monday next after Easter-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 these terms were formerly longer then they are now, till contraried by the statutes 32 H. 8. c. 21. and 16 Car. 1. c. 16. &c. There are four terms in year, called Effinum day; the day of exceptions; the day of return of writs; and day of appearance, called the quart decem poel. The term is said begun on the Effinum day, when it begins the Friday in each court of law at Writsinger, to take and enter effinum, 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 Ed. 4. 569.

All the term in construction of law is accounted but 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. Trim. 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 fit not but in term, as to giving of judgments: And the judges of B. R. and C. B. before Trinity term 1651. did not fit 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 tol of the court, and too much hurry in dispatch. Mich. 22 H. 9. c. 1. &c. &c. These terms have been abridged and return of writs and processe confirmed. 1 W. & M. st. 1. c. 4. Where there is a term intervening between the teffe 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, &c. 2 Hawk. 258. The abridged terms are Hilary and Trinity terms only; so called, because in them the suits are joined, and records made up of causes, to be tried at the Lent and Summer assizes, which immediately follow. 2 Ed. 4. 568.

By Stat. 24 Geo. 2. c. 58, Ed. 1. There shall be in his majesty's courts for 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.

Sott. 2. The same days of return shall be observed in all his majesty's courts of record of the King; and there shall not be any days of return, from the day 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 of fines, promissory bills, &c. in like manner as hath been used in the day of the return, called from the day of St. Michael in three weeks; and the said 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.

Sott. 3. If any writ of dower unde nilibar factum, 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 of St. Michael, 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; it 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 Ascension of our Lord; if in one month from the day of Easter then on the morrow of the Holy Trinity; if in eight days of Easter, then in fifteen days of Easter, then on the morrow 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 the Holy Trinity.

Sott. 4. In all writs of dower unde nilibar factum, after idellie joined, it shall not be needful to have above fifteen days between the telle and return of the writs, or any other process for trial of the issue.

Sott. 5. And in case of writs of dower unde nilibar factum, and return of right of advowson, all writs of summonses 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.

Sott. 9. In such cases as special days have been used to be given, this act shall be lawful to the judges of the King's courts of record to appoint special days of return.

Sott. 10. The days of alrize in dairre preteriment, and in a plea of quare impedit limited by the statute of Marlborough, 52 H. 3. c. 12. and also the days to be given in arrest limited in 5 Ed. 3. c. 6. and 23 H. 8. c. 3. must be given at the alrizes on any small hind in the said day of return.

**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 eisnoti.) Rent-terms or times, the four quarters fall upon which rent was usually paid. Coed. edit. 1797.
A lord of a manor hath a freeholder who receives his freedom to another to be occupied; the occupier (having the actual possession) is called the feer tenant. Wilt. Synod. part 2. tit. Finis. fol. 157. G. Grose. fol. 104. Britton, cap. 299. Parkinson's Evesham, p. 231.


Terre excluditibus, Land that may be tilled or plowed. Min. Angl. 1 Par. fol. 496. Terre exendaria. Is a writ directed to the etfeator, &c., willing him to enquire and find out the true value of any land, &c., by the oath of three men, and to certify the extent into the chancery, &c. Reg. of Writs, fol. 293.

Terre fruita, Freth-land, or such as hath not been lately plowed; likewise written Terre fruicta. Min. Ang. 2. par. fol. 377. Terre hydata, Was land subject to the payment of Hydage, and the contrary was terre non hydata. Selden.

Terre inalienabile, Land that may be gained from the sea, or included out of a waste, to a particular use. Min. Angl. 1 Par. fol. 496. Terre inedita, Unplowed. In the beginning of H. 3. such land in England as had been lately held by some noble Norman, who by adhering to the French King, or Dauphin, had forfeited his estate in this kingdom, by which this means became an estate to the crown, was called Terra Normanamariam, and reformed, or otherwise disposed of at the King's pleasure, where there is mention of terra culta, and terra invixa. Mont. Angl. 1 Par. fol. 500. b. Terre debitis, Weak or barren land. Inq. 22. ch. 6. Terre dominata bel incuminitale, The demesne land of a manor. Cowell, ed. 1727.

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distillation of the probate of wills or testaments by the learned Sir Henry Spelman among his late remains, pag. 117.

Cowell, edit. 1727.

Teflatum, is a writ in peronal actions, as if the defendant cannot be arrested upon a citit in the county where the action is laid, but is returned non est inventum by the sheriff. This writ will find its way out of the court where such perdon is thought to have wherewith to satisfy: And this is termed a teflatum, because the sheriff hath formerly testified that the defendant was not to be found in his bailiwick. See Nethin's Return of Writs, fol. 87.

Ernulph was a word commonly used in the last part of every writ, wherein the date is contained, which begins with these words, Tejfe me tpsa, &c. if it be an original writ; or if judicial, Tejfe Roberto Raymond volute, or Roberto Eyrre militis, according to the court whence it flowed. Yet we read in Glanvill, lib. 1. cap. 6. & 13. and lib. 2. cap. 4. The last clause in an original writ is thus: Tejfe Radulpho de Clonvillo apud Clarendon, &c. and divers times in the Register of Writs, Tejfe oufide Anglie, as namely in the title Prohibition, &c. and Conjunction, f. 54. See 20 in. Abr. 262—266.

Etymological, (mentioned in fl. 59. Ed. cap. 17.) is a certain kind of writing which relates to the name of words or phrases, and is written in golden letters, and carefully preferred in the churches. Cowell, edit. 1727.

ETTUS ROFFENIS, An ancient manuscript containing many of the Saxo laws, and the rights, customs, tenures, &c. of the church of Rochester, drawn up by Ernulph bishop of that see from 1144 to 1122. Cowell, edit. 1727.

Diamon, Persons navigating boats on the river Thames, committing theft, how punished, 2 Co. 3. cap. 28.

Transage of the King, (Thomsequ Regis,) Signified a certain part of the King's land or property, whereof the ruler or governor was called Thane. Cowell, edit. 1727.

Uxne, (From the Sax. Thanian, miniftrea,) 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 profeminently called thani & serementis Regis, though not long after the conquest, the word was disused, and instead thereof, those men were called Barons Regis, who as to their dignity, were inferior to Earls, and took place after Bishop, Abbots, Barons and Knights. There were also thani miniares, and thane were likewise called barons: They were lord of many sorts of men and had a particular jurisdiction within their limits, and over their own tenants in their courts, which to this day are called court barons: 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 grante mine Bifropes, and mine Earls, and all mine Thiegen on that. But when more properly Pallaio minifher bagkand land. Charta Edw. Conf. Pot. 18 H. m. 9. per Inpsct. Lamb. in his Exposition of Saxon words, verb. Than. And Skene de vorber, sfigur. fa th. It is a name of dignity, equal to that of an earl, but of the lower sort. This application was in use after the Norman conquest, as appears by Domesday, and by a certain writ of William the First: William Rex folutus Hermannum efigopum, & Stevinam, & Brieu, and ames Thanos nos in Dorsetfrif. page amabilis, ALS. de Abbartiu. Camden says, They were ennobled only by the office which they administered. Thanes Regis is taken

for a baron. 1 Inps. fol. 5. 1. And in Dom. Legum, qui eis equo munia. See Als. de Notitia, fol. 131. The Saxan Thanos he called from Thanian, service; and in Latin minifter a minisr. So that a Than at first (like manner as an earl) was not properly a title of dignity, but of service. But according to the negages of service, or of greater emanation, found in the book: So that thefe that served the Realm, for the eftablishment, either in court, or commonwealth, were called Thani majores and Thani Regii. Thence that served under them as they did under the King were called Thancies minores, or the taller Thane. Cowell, edit. 1727. See Specimen, c. 7.

Shawan-Lands, Such lands as were granted by charter of the Saxon Kings to their Thanes with all immunities, except the threefold necessity of expedition, repair of castles, and mending of bridges. Cowell, edit. 1727.

Deforte, Was a certain form of statutory money, impose on the Realm on the Britains and their lands, and paid every year; which payment continued under several reigns of the Saxan, Dunbii and Numan Kings; for the word is mentioned in the laws of H. 1. c. 78.

Brief, (Partum,) is an unlawful fancy taking away of another man's movable and personal goods, against the owner's will, with intent to defraud, or the like, is called into theft simply 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 petty larceny. See Larceny. and Felony. Toft in the person, or in the presence of the owner, he called robbery. Wif. Symb. part. 2. tit. Indictment, fol. 58. 59. 60. Briefe-Bote, (From the Sax. Theof, i.e. Partum, and Bote, Campefian,) Is the receiving of a man's goods again a thief, after flolen, or other amends not to prosecute the felon, and to the intent the thie mny efcap'e; which is an offence punishable with fine and imprisonment. H. P. C. c. 139.

Thelamony, or Seve effendi gueri de Chelone, Is a writ lying for the citizens of any city, or burgesses of any town, that have a charter or prescription to free them from toll, against the officers of any town or market, who would confound them to pay toll of their merchandise contrary to their said grants or prescription. F. N. B. fol. 226.

Thelomannus, The toll-man or officer who receive the toll. Cowell, edit. 1727.

Thelomotio rationalit habendo pro dominio hactenus loci carum Regis in dominium. Is a writ that lies too long in the King's demesne for an use, to recover reasonable toll of the King's tenants there, if his demeine hath been accustomed to be titled. Reg. Orig. fol. 87.

Themmagnatus, A duty or acknowledgment paid by inferior tenants in respect of theme or oman. Cowell, edit. 1727.

Cheninjium, Toscilii agrum, i. e. Acadum acentum circa egras pro chalward eavum, vulgarly called hedges or dice-kows. London. Cowell, edit. 1727.

Theedem. In the degrees or situations of persons among the Saxons, the earl or prime lord was called the King's thane; with an intent to fleek them; and the hofpitalian or inferior tenant was called theedem, or under thane. See Thane.

Theodes, The bondmen among our Saxons were called theeades and eadets, who were not counted members of the commonwealth, but parcels of their masters goods and household. See Eadmen of Domes. cap. 5.

Theaurus, Was sometimes taken in old charters for thescarearium, the treasury; and Domesday regiller, when kept at Winchester, was often called Liber tescarii. Cowell, edit. 1727.

Thetbings, A titling. Thequetting-umort, a titling-

man. Cob. 2.

Thetaker. See Felony.

Eingus, (Thanus,) A nobleman, a knight, or freeman. Cob. 2. fol. 197.

Thegubow, Is used for a constable, in fl. 28. H. 8. c. 12. and Leonard's Duty of Constables, pag. 6. and feema
The Earth for tiles is to be digged and cast up before the fiirth of November yearly, and to be dried and turned before the fiirth of February following, and be wrought before the fiirth of March: And every common lord shall within the space of a year, in breadth six inches and a quarter, and thicknesse of one inch and a half a quarter; roof tiles are to be thirteen inches in length, and of the same thicknesse as the common tiles, &c. And if any perfiin put to fale any tiles contrary hereto, they fhall forfeit double value, and be fined.

Eating. Where one kills another in fighting at tiding, by the King's command, the accident is executable. But if it be by tiding about the command of the King; or by parrying with naked swords, covered with butons at the points, &c. which cannot be used without manifest hazard of life, it will be felony of man- slaughter. H. P. C. 31.

Chittim. Barning of names of timber prepared for building of houses, &c. 36 H. 8. c. 6. And the cutting up, barking or deflroying timber, how punished, 1 Geo. 1. st. 2. cap. 48. 6 Geo. 1. cap. 16.

Oak timber (except for building) to be felled in April, May and June, 1 Geo. 1. st. 2. 20. Oak bark not to be regared, 1 Geo. 1. cap. 22. 19.

Timber or boards, not to be imported in English shipping, &c. 12 Car. 2. cap. 18. 8. 9.

The importation of fir timber and deal boards, from the Netherlands or Germany prohibited, 13 & 14 Car. 2. cap. 11. 23. From Germany, 6 Geo. 1. cap. 15.

Deal timber, or other timber boards imported, to what duties liable, 2 W. & M. st. 2. cap. 4. 8.

With the consent of lords and tenants, common may be included for planting timber, &c. 36 Geo. 3. c. 36. (Intituled, An act for encouraging the cultivation, and for the better preservation of trees, roots, plants and shrubs.) Sect. 1. Whereas divers persons have, of late years, willfully and maliciously cut down, burned, or otherwise destroyed, timber-trees, and trees standing for, and likely to become timber, growing as well in the several forests, chafes, and other open grounds, as in the woods, and plantations, and enclosed grounds, within this kingdom; to the great de-
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Timent of the owners of such trees, and to the dam-
agement of planting in general. This, however, is not
Britain; and whereas the disposition of nursery men to
improvements in planting and gardening, through Great
Britain, is also of great use to the public; and many
nursery men, gardeners, and others, have collected and
cultivated, at great expense, roots, shrubs, and plants,
of every country, and imported them, for the use of
ed in the nursery men, and gardeners in particular, and have digged up, taken or
or, out of such nurseries, gardens, and other places, in the nursery men and
and gardeners, and thence and altogether support them-
and many others of his majesty's subjects: And
whereas many evil disposed persons, well knowing the
value of such roots, shrubs, and plants, have, of late
years, frequently enticed into nurseries, garden, and other
places, in the nursery men, and gardeners, and have
many evil disposed persons, and thence and altogether support

Sect. 4. Power given to juries of the peace to put
this act in execution.

Sect. 5. Where the respective forfeitures shall not be
paid down on conviction, the offenders may be com-
mitted to hard labour; for the first offence one month,
and for every subsequent offence, the like punishment and
offence for three months, and to be thrice whipped.

Sect. 6. Persons hindering, or attempting to prevent
feizing offenders, forfeit 10l. to the person concerning
them; and if not paid down, to be committed to hard
labour, not exceeding six months.

Sect. 7. The following is the form of the informations,
and the other half to the person aggrieved.

Sect. 8. The conviction and convictions of all and
every offender and offenders against this act, shall be
certified by the juries or justices of the peace before
whom the same shall be made, to the next general
quarter-fees of the peace, to be filed amongst the
records of the said convictions; and that such conviction shall
be fairly written on parchment or paper in the follow-
ing form of words (as the case shall happen) or in any
other form of words to the like effect; that is to say,

To wit. [B E it remembered, That on the ___ day
of ___ in the year ___ A. B. was
upon the complaint of C. D. convicted before one of the
justices of the peace for — in pursuance of an act passed
in the fourth year of the reign of his Majesty King
George the third, for ___ as the case shall be.

___ under — hand and seal the day and year
above written.

Which said conviction shall be good and effectual
in law to all intents and purposes; and shall not be quali-
ed, set aside, or adjudged void or insufficient, for want of
any form words, how soever; nor be liable to be re-
moved by averriari into his majesty's court of King's
bench, but shall be deemed and taken to be final to all
intents and purposes whatsoever.

Timberdoodle. A service fco called, by which the re-
tenant was to carry timber felled from the woods to the
lord's house. 'Tis mentioned in Than's Chronicle.
Cottell, edit. 1727.

Time and Place, Are to be set forth with certainty
in a declaration; but time may be only a circumsta-
ce when a thing was done, and not to be made part of
the issue. 6 Cr. Mtd. 266. It has been held, that
an important event mentioned in the record, as when the
time is appointed for the payment of money, and there is
no such day, the money may be due presently. Hbk. 189.
5 Rep. 23. If no certain time is implied by law for
the doing any thing, and there is no time agreed upon
by the parties, then the law doth allow a convenient time
to the party for the doing thereof, i.e. as much as shall
be adjudged reasonable, without prejudice to the doer of
it. 2 Litt. 17. 527.

In some cases one hath time dur-
ing his life for the performance of a thing agreed, if he
be not had been to do it by any law, but in such case he
be had been to do it by necessity, or by such law as
such fact required. Hbk. 22 Cor. 1. B. R. Time taken
generally, hath also its time: And what is done in time
of peace, the law doth more countenance than in time
of war; in case of bar of an entry, or claim by five, and
of delicts, 2 Cor. 1, 4th 249. 10 Rep. 82. 4 Scob.
190, 62. 22 Cor. 1. B. R.

LINEL LE RIG, (Fr.) Is used for the King's hall,
wherein his servants were used to dine and sup.
Stat. 13 R. 2. cap. 3.

Linnenman, or Linnen, Was a petty officer in the
force of the admiralty, both on the coasts and in the
ports, and other servitors. Consp. Furely Count.
Regis, cap. 4.

Linnenman, Thos fermen who destroyed the young
fry on the river Thames, by nets and un lawful engines,
still suppressed by the mayor and citizens of London.
Of which, see Stowe's Survey of London, p. 18.

LINEL,
1. Of what tithes are in general due; and where personal tithes are due.

2. Of receiving such tithes in a customary way; and of recovering tithes due from grantees.

3. Of what mixed tithes are due.

4. Of recovering such tithes in a customary way; and of recovering tithes due from grantees.

5. Of what tithes are in general due; and where personal tithes are due.
The occupier of a new erected mill is liable to tithes, altho' such mill is erected upon land discharged of tithes, as may be inferred from the tenor of the Act 5 Geo. II. c. 52. 2

It is said in one book, that the occupier of an antient mill shall not pay tithes: But that the occupier of a new mill is, by the 9 Ed. 3. c. 5. made liable to pay tithes, 1 Tit. 15. p. 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 antient mills, there can be no doubt, that such antient mills, as before the making of this statute were liable to pay tithes, continued afterwards to be liable. 2 Rep. 18. 3 How. & Sta. 1 Ed. 212.

No profit is taken of the part of the profits which a man receives without personal labour, or of the profit which one man receives from the labour of another. 1 Tit. 1556. pl. 1. p. 2. 2 Rep. 621, 649.

If a man lets a ship to a fisherman, no personal tithes are due from the money received for the use of such ship; because a man is profit without personal labour. 1 Tit. 1556. n. p. 2.

If a man purchases a house for 30l. and afterwards sells it for 500l. no personal tithes are due; for the personal labour bears no proportion in this case to the profit. 1 Tit. 1556. n. p. 3.

No profit is taken of the part of the profit, which is made of the meat of the cattle, which are kept by a person for his own use alone. 2 Tit. 621. 4 How. 34.

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 Rep. 623. E. pl. 2. 1 Tit. 1543. S. pl. 7. p. 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 Rep. 645. pl. 11. 2 Tit. 475. Prem. 335—12. 2 Rep. 254.

It is evident, that 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. 2 Tit. 475. Prem. 335—12.

As it would be tedious, 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.

4

—Adjudged. Abiding in the first house of the word, means the depositing of a beast the property of a stranger: But this word is constantly used, in the books, for depositing the beast of an occupier of land, as well as that of a stranger. 5 Rep. Ab. 53.

An occupier of land is not liable to pay tithe for the pasture of hogs, or other beasts, which are used in husbandry, or in which they are depastured: Because the tithe of corn is by their labour increased. 1 Rel. Atr. 466. pl. 2. pl. 3. pl. 6. pl. 7. 2 Tit. 446. Laad. 137.

But if hogs or other beasts are used in husbandry out of the parish, in which they are depastured, an agistment is due for them. 7 Med. 114. Herre's cafe. 2 Tit. 130.

It seems to be the better opinion, that no tithe is due for the pasture of a faddle horse, which an occupier of land keeps for himself or servants to ride upon. 1 Rel. Atr. 464. pl. 4. 2 Tit. 430. Eq. Joc. 174. Band. 3.

An occupier of land is liable to an agistment tith, for all horses which he keeps for sale. 2 Tit. 430. Hamps. v. Wild. 1 Rel. Atr. 647. pl. 14. 2 Tit. 130.

No tithe is due for the pasture of milk cattle, which are milked in the parish, in which they are depastured; because tithe is paid of the milk of such cattle. 2 Tit. 425. 2 Ed. 132. 2 Tit. 130. 2 Tit. 426.

Milk cattle, which are reserved for calving, shall pay no tithe for their pasture whilst they are dry; but, if they are afterwards fold, or milked in another parish, an agistment is due for the time they were dry. 2 Tit. 130. 4 Ed. 26.

No tithe is due from an occupier of land; for the pasture of young cattle, reared to be used in husbandry, or for the purl. 2 Tit. 46. Storinhg v. Fleetwood.

But, if such young beasts are sold, before they come to such perfection as to be fit for husbandry, or before they be reared in such form that they are depastured, an agistment tith must be paid for them. 2 Tit. 86. Welmore's cafe.

An occupier of land is liable to an agistment tith, for all such cattle as he keeps for sale. 2 Tit. 446. 476. 7 Rep. 28. pl. 6. 2 Tit. 47. 2 Car. 237. 2 Show. P. C. 192.

But if any cattle, which have neither been used in husbandry, nor for the purl, are after being kept some time killed, to be sent in the family of the occupier of the land on which they were depastured, no tithe is due for their pasture. 2 Tit. 281. pl. 6. 2 Tit. 445. 476. 2 Tit. 237.

It is in general true, that an agistment tith is due, for depositing any form of cattle the property of a stranger. 2 Tit. 475. 2 Tit. 275. 2 Tit. 279. Band. 1. Prem. 330.

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. Band. 10. 79. 7 Rep. 14. 2 Tit. 391.

An agistment tith is due for such cattle, 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 hores upon. 1 Rel. Atr. 646. pl. 19.

No tithe is due for such cattle as are depastured upon land, which in the same year paid tithe of corn. 2 Tit. 18. 1 Med. 216.

If land, which has paid tithe of corn in one year, is left unfown the next year, no agistment is due for such land; because, by this lying there, the tithe of the next crop of corn is paid by the occupier. 1 Rel. Atr. 646. 2 Tit. 137.

If land, which has paid tithe of corn, is suffered to lie fallow longer than by the course of husbandry is usual, an agistment tith is due for the beasts depastured upon such land. 2 Tit. 137.

As the question, whether an agistment tith is due for sheep, does not seem to be quite settled, it will not be argued upon the principal cafe, in which this has been agitated.

It is laid down in one old cafe, that no tithe is due for the pasture of sheep, because they are animalia fruticulis. 1 Rel. Rep. 63. pl. 7. Musial v. Price. Mich. 12. Tit. 1.

But
But in another book of the same author's, where this very cage is reported, there is a dubitator. 1 Rel. Abr. 645. pl. 12.

In a cafe, not long after, it was held, that an agiment tite should be paid for sheep, which, after having been upon turns not severally, by which they were lettered to the value of five shillings each; and were then fold. It also appeared, that the defendant had, before the next fleereing time, bought in as many as were fold; and that of these tite of wool was paid. It was insinuated, that, if an agiment was to be paid for the coop fold, this would be a double titing: But the court held, that this was a new increafe, and decreed the defendant to account for an agiment tite. Gilly. Rep. in Ep. 231. Coleman v. Baker, Pajch. 12 Geo. 1.

In this cafe no notice was taken of the cafe of Baker and Sweet: But the cafe of Dammer and Wingfield. 3 H. 8. Fren. was mentioned. In which it had been decreed, and the decree had been aifirmed on a rehearing, that the tite for defapating sheep from the time of fleeing till they were fold, fliould be account ed for.

But in a full later cafe, the court of Exchequer were of a quite different opinion. A bill was brought for the tite of defapating sheep four months in the paraft after they had been florn, it appeared also, that at the end of this time they were removed into another paraft; and that they were fliorn there at the next fleereing time. In this cafe the cafes of Coleman and Baker, and Dammer H. B. were cited by the plaintiff's counsel. But the court held, that no agiment tite fliould be paid, because fheep are animalia fruitifera. Bank. 713. Poor v. Seymour, Hil. 5 Geo. 2.

Corn. It is laid down in fome books, that no tite is due on the rakings of corn invariently faittered. 1 Rel. Abr. 645. pl. 11. Co. Eliz. 347. Frenm. 335. Mor. 278.

But, if more of any fort of corn is fraudelently fai tered, than, if proper care had been taken, would have been fai tered, tite is due of the rakings of cupboard corn. Co. Eliz. 475.

And it has been fai by Holt, Chief Justice, that tite is due of the rakings of all corn, except such as is bound up in sheaves. 12 Med. 235.

No tites are due of the stubbles left in corn fields, after mowing or reaping the corn. 2 Ifl. 621. 1 Rel. Abr. 645. pl. 14. H. 9.

Tite of hay is to be paid, although befts of the plough or plai, or beets are to be foddered with fuch hay. Co. Jey. 47. Webh. V. Warner. 1 Rel. Abr. 650. pl. 12. 12 Med. 497.

But no tite is due of hay grown upon the headlands of fome fefts, provided that such headlands are not wider than is fufficient to turn the plough and fheeps upon. 1 Rel. Abr. 645. pl. 19.

It is laid down in one old cafe, that if a man cuts down in the fea thees, carriages is away and gives it to his plough cattle, not having sufficient fuffe rence for them otherwise, no tite is due thereof. 1 Rel. Abr. 645. Cranwy w. Webb, Mich. 9 Car. 1.

And in a modern cafe, the court of Exchequer femeled to be of opinion, that no tite is due of wethers or clover, cut green, and given to cattle in hubandry. Bank. 275. Hayes v. Duanj, Hil. 3 Geo. 2.

But in another cafe, fome years before this cafe, it was held, that the right to tite of hay accrues upon mowing the grafs, and that the fubfquent application of this, which is in grafs, or when it is made into hay, fhall not, although befts of the plough or plai are fed with it, take away this right. 12 Med. 498.

And the cafe of this cafe fai coincides with that of an old cafe; in which it was held, that tites cut green, and given to cattle are not only tites of the plough, but by special cuftom be exempted from the payment of tite; from whence it follows, that such tites are not exempted de jure. 12 Med. 498. Silby v. Bank, Pajch. 13 W. 3.

It is laid down in fome books, that no tite is due of aftertw-_mow hay; because tite can only be due once in the fame year from the fame land. F. N. B. 11. Bras. Difn. pl. 16. 2 Ifl. 652. 11 Rep. 16. Co. Cut. 42. Lid Raym. 743.


And the principle, upon which the cafe of this cafe that no tite is due of aftermow hay is founded, is denied in fome modern cafes.


Tithe of woodland, is held to be a proper tite, because wood does not renew annually: But it was, in very antient times, paid in many places by custom. 2 Ifl. 652. 12 Med. 111. Salt. 565. Comb. 404. Bank. 61.

A ction was made, in the feventeenth year of the reign of Edward the Third, by John Stratford, archbishop of Canterbury, that tites fhould be paid, within this province, of fitio caduc. 2 Ifl. 652. 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, unlefs in fuch places where fuch tites are licensed to be paid. 2 Ifl. 652.

The answer was, let it be done of this, as it hath heretofore been used to be done. Ibid.

In the next year, the commons complained to the king of this cafe, for taking tites of all manner of wood, as an unprecedented thing, and petitioned that the people might remain in their produce, as they had been under his royal progenitors; and that a prohibition might be granted to all, who should be impleaded in court Chriftian for tite of wood. Ibid.

The answer was, the king willeth that law and reason be done. Ibid.

In another petition presented in the twenty-five year of the fame reign, the commons complained, that the clergy, by virtue of the cafe made by the archbishop of Canterbury, demanded and took tite both of grofs wood and underwood, whether this cafe was fold or not. Ibid.

To this the king answered, that the archbishop of Canter bury and other bishops have answered, that no tite is demanded, by virtue of the cafe, but of underwood. Ibid.

After fome other petitions had been presented by the commons, without effect, the great men of the realm in the forty-fifth year of the reign of this prince, joined with them in one. 2 Ifl. 652.

In
A bill being brought for title of the loppings of timber-trees, which had been sold for firing, it was intimated that this wood, which would otherwise have been exempted from the payment of tithe, was liable therefor, because it was sold to be used for firing; and the cafes full now for that purpose. The bill was laid before the House by Hardwicke Chancellor, in the cafe in 1 Lev. 189, and Sid. 300. the wood in question was copice wood, which had been usually sold for firing; and such wood, of whatever age it is, is always liable. The cafe of Greenway and the east of Kent, is quite a singular one, and is not low, for in the cafe of Edge and Bexley, Hil. 11. Gr. 1, it was agreed, that no title is due of the wood of a timber tree, which has been once privileged from the payment of tithe, unless such wood is felled to be used for firing. AS Rep. Walton v. Tryon, Mid. 25. Grs. 2.

It is laid down in divers books, that if a timber-tree of the age of 20 years is lopped, no title 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. Bro. Dos. pl. 14. 11 Rep. 4. Grs. 4. Gibs. 175. 1 Roll. Ab. 640. pl. 5.

But the doctrine laid down in one old book is, that if such loppings of a timber-tree, as are of the age of 20 years, shall be exempted from the payment of tithe; and it is added as a reason, that branches of that age may be useful in building. Pleas. 470. Siby v. Hulm.

The former, however, is the better opinion. In the cafe ante cited, it was held, that wherever a tree has been 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 titheable. 1 Roll. Ab. 640. pl. 1.

But in the cafe 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. AS Rep. Walton v. Tryon.

In the cafe ante cited, it was laid down, that if a tree, which was once privileged from paying tithes, is felled, the germsins that spring from the root of such tree, are also privileged. 11 Rep. 48. Liford's cafe.

But, in the cafe already cited, it was said by Hardwicke Chancellor, that all germsins, which spring from the roots of trees that have been felled, are titheable. AS Rep. Walton v. Tryon.

The wood of a copeice, which has usually been sold 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 cafe so often cited, it was said by Hardwicke Chancellor, that, when the wood of copeice 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 copeice wood, tithe must be paid of the whole; because it would be very difficult, to separate the titheable wood from that which is not so; and the owner ought to liable for his folly in mixing them. AS Rep. Walton v. Tryon.

3. Of what mixed titles are due.

Such titles as arise from beasts or birds, which are fed with the fruits of the earth, are called mixed titles. 2 Inf. 649. 1 Roll. Ab. 635.

Many things are by the ecclesiastical law liable to pay such titles, which by the Common law they are not. 2 Inf. 621. 4 Mid. 344.
T I T

The defign under this head is to shew, of what mixed tithe are due by the common law.

But, in either of thse cafes, if more wool, than ought to have been cut off is fraudfully cut off, tithe mät be placed of the wool. 1 Roff. Ab. 455. pt. 15. 464. pl. 17.

It is laid down in one cafe, that no tithe is due of the wool of fheep killed to be spent in the houte, or of the wool of thofe whose die of themfelves. Lit. Rep. 31. 4 Rep. 210. 456. pt. 8.

But in another cafe, a few years after, it is laid down, that this tithe is due of the wool of fheep as are killed to be spent in the houte. 1 Roff. Ab. 646. pl. 19.

Fift taken in a pond, or in any included river, are liable to pay tithe. 1 Roff. Ab. 630. pl. 4. pl. 6. pl. 7.

4. Of recovering small tithe in a summary way; and of recovering tithes due from quakers.

By the 7 & 8 W. 3. cap. 6. f. 1. It is, for the more easy recovery of small tithes, where the fame do not amount to above the yearly value of forty fhillings, from any one perfon, enacted, 'That if any perfon fhall抗拒 or withdraw, or fail in the payment of fuch small tithe, or in the space of twenty davs after his date thereof, then that it fhall be lawful for the parfon to whom the fame fhall be due, to make his complaint in writing to any two juftices of the peace, within the county or place where the fame fhall grow due; neither of which juftices is to be patron of the church whence the faid tithe arises, or any ways interested in fuch tithe.'

But by par. 6, it is provided, 'That no complaint fhall be heard as beforefaid, unlefs it fhall be made within two years after the fame tithe becomes due.'

And by par. 10, it is provided, 'That no perfon who fhall begin any fuit, for the recovery of fuch small tithe, in the court of exchequer, or in any ecclefialftical court, fhall have any benefit of this act for the fame matter.'

By par. 2, it is enacted, 'That the faid juftices fhall fummon, in writing under their hands and faft, by reafonable warning, every perfon against whom any complaint fhall be made as beforefaid, and after his appearance, or upon default of appearance, the faid writing being proved before them upon oath, the faid juftices fhall proceed to hear and determine the faid complaint, and fhall in writing upon oath take the faid juftices in charge, and give fuch reasonable allowance for fuch tithe as they fhall judge to be juft, and alfo fuch costs and charges, not exceeding ten fhillings, as upon the merits of the caufe fhall appear juft.'

And by par. 4, the juftices are impowered to administer an oath to any witness produced.

But by par. 8. It is enacted, 'That if any perfon complained against fhall infift upon any prefcription, computation, modus decennarius, or other title, whereby he ought to be freed from the payment of tithe; and fhall deliver the fame in writing to the faid juftices; and fhall give to the faid complaining juftices a credit, to pay all fuch cells as fhall be given againft him, upon a trial at law, in cafe the faid title fhall not be allowed; that then the faid juftices fhall forbear to give judgment.'

By par. 3. A diftrefs is given, 'In cafe of refufal or neglect, by the space of 10 days after notice given, to
It is provided, 'That this act shall not extend to tithes within the city of London, or in any other place, where the same are settled by any act of parliament having in force.'

By par. 7. An appeal is given to the justices, and it is enacted, 'That if the justices there present, or the majority of them, shall confirm the judgment of the two judges, they shall decree the same by order of sefftis, and shall have such costs as to them shall seem just and reasonable.'

By the same par. it is enacted, 'That no proceedings, or judgments, had by virtue of this act, shall be removable, or superseded, by any writ of certiorari, or other writ whatsoever, unless the title of such tithes shall be in question.'

By the 7 and 8 W. 3. c. 34. par. 4. It is enacted, 'That where any question shall refer to pay, or compound, for his great or small tithes, 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 chapel, to divide such tithes between the parties, in any way interred in the said tithes, 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 is impowered to administer, or in such manner as this act is provided, the truth and justice of the said complaint, and to ascertain what is due from such quaker to the party complained, 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 by such quaker to pay according to said before them upon oath, to be made by any of the said justices, by warrant under his hand and seal, to levy the money, thereby ordered to be paid, by distress 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-judges, 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 sefftis, and shall proceed to give such costs and charges 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 superseded by any writ of certiorari, or other writ out of his majesty's courts of his Majesty, or any other court whatsoever, unless the title to such tithes 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 tithes and all other ecclesiastical dues from quakers, as by the 7 and 8 W. 3. c. 34. is given for tithes to the value of ten pounds.

And by the 1 Geo. 1. fl. 2. cap. 6. par. 3. 'That all disputes touching the said tithes, and all disputes touching any two or more justices of the peace of the said county or place, other than such justice as is patron of the church, or chapel, to which the said tithes or dues belong, or any way interred in the said tithes, upon complaint of any patron, vicar, curate, farmer or proprietor of such tithes, or other person having a right to have receipt of or enjoy, or any such tithes or dues, are hereby required to be summed, 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 notice 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 and reasonable, and may be so executed, and such order and costs and charges, as upon the general quarter-judgments 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 tithes shall be in question, in like manner as in and by the same act is limited and provided.'

For the better understanding of this subject, see 5 Inst. Abr. tit. Tithes, 8 Inst. Abr. tit. Diffinit, and a new treatise on the laws concerning Tithes.

Eittiging. (Tithingom, From the Saxon Tithanb, which signifies Doctrinal, Signifies, according to Lombard, in Is Digest Confess. the number or company of ten men, chosen in each city, or commune of the society, all being bound to the King for the peaceable behaviour of each of those companies, there was one chief or principal person, who from his office was called reftingom-man, at this day in some places tithingmen, but it is indeed a condable, 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 Fr. cap. 4. Edwy. ed. 1777. See Chiet pledge, Front-pledge, December and Eittiging.

Eittigingsum. In the Saxon times, for the better consideration of peace, the more easy administration of justice, every hundred was divided into ten districts or tithings, each tithing made up of ten frilos, each frilgo of ten families, which tithingmen, or civil eunaws were to examine, and determine all lesser causes between villages and neighbour, but to refer all greater matters to the superior courts, which had a jurisdiction over the whole hundred. Edwy. ed. 1777. See Kne. Porech. Aug. p. 633.

Tittae, (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 only used, or rather meaning, for every title or right of entry over a person, as for every right is a title, but every title is not such a right for which an action lieth, and therefore Titula off justa causa justifit quod usufructum off, and signifies the means whereby a man cometh to his land, as his title is by fine or seisin. And as by a release of a right a title is released, so by release of a title, a title is released also. See 4 Por. Rep. Edwy. Albame's cante. 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. Con. Lond. An. 1175. Nuiliis in propterism, nullius in damnabili apart, turbins, non est rei. For all these 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 sign that the saint had a title to that church. From whence the church itself was afterwards called titulus. Edwy. ed. 1777. See 2 Edwy. 178. 278. 258.

Title of Curty, is when one seised of land in fee, makes a covenant thereof on condition, and the condition is broken; after which the tenant hath title to enter into the land, and may do so at his pleasure, and by his own grant, and thereby a right of title is given to him. And it is called Title of Curty, because he cannot have a writ of right against his lessee upon condition, for his right was out of him by the seisin, which cannot be reduced into entry; and by entry must be for the breach of the condition. Edwy. ed. 1777.

Eittigingsum. To L. 68. Titulus, To L. 10. Deb. For rebuilding the town of

5 Geo. 2. c. 14. 108.

Delicia, A novel. In the inquisition of seignories and knight's fee, within the counties of Essex and Hertford, made in the 13th and 14th year of King John.—Pier. Pict. trans' de pace, in seignorialibus et curialibus Regis R. t. i. e. by the service of fasting with a cell at the King's coronation.—See Lib. R. Soc. Sanc. fol. 137.}
TOL

Tobacco, Not to be planted in England or Ireland, 12 Car. 2. c. 32. 15 Geo. 2. c. 7. s. 18. 22 & 23 Car. 2. c. 26. 5 Geo. 1. c. 11. s. 19. A duty of 3d. for pound upon tobacco, 1 Jan. 2. 12 Geo. 2. c. 26. 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. 10. f. 5.

3. Nine months time given for paying the subsidy on plantation tobacco, 2 & 6 Ann. c. 2. 3. c. 10. Tobacco to be imported in cask, or cask only, 10 & 11 W. 3. c. 21. f. 29.

Nine months time given for paying the one third subsidy on tobacco, 2 & 6 Ann. 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. Precautions concerning the drawback on tobacco exported to Ireland, 8 Ann. c. 13. f. 18. Two per cent. allowed for wafe, 6 Geo. 1. c. 21. f. 48.

No debenture or drawback for ships under 20 tons, 8 Ann. c. 13. f. 20. Allowances made out of the duties on tobacco, 12 Ann. f. 2. c. 8. 5 Geo. 1. c. 7. 9 Geo. 1. cap. 21. fell. 3. 12.

The adulterating tobacco and snuff prohibited, 1 Geo. 1. c. 46. 5 Geo. 1. c. 11. f. 22. Tobacco compounding or endowreng to obtain a drawback for the same, 1 Geo. 1. c. 46. f. 2. Allowance for wafe in exporting to Ireland, 6 Geo. 1. c. 21. f. 48. Penalty on landing tobacco in Ireland, that is entered for other foreign parts, 6 Geo. 1. c. 21. f. 49. Condemned tobacco to be sold or burned, 12 Geo. 3. c. 18. f. 10. Importation of tobacco flaks prohibited, 12 Geo. 1. c. 28. f. 13.

Repeal of a prohibition of importing tobacco stripped, 2 Geo. 2. c. 9. Allowance and drawback upon tobacco out of the last subsidy, 21 Geo. 2. c. 2. f. 5.

Importers of tobacco to bring a manifest from the officer of the customs in the plantations, 24 Geo. 2. c. 41. Regulations for removing tobacco by land, 24 Geo. 2. c. 41. f. 9. 26 Geo. 2. c. 13. Regulations for carrying tobacco coastwise, 24 Geo. 2. c. 41. f. 29.

No tobacco to be exported unless in vessels of 70 tons, 24 Geo. 2. c. 41. f. 25. Interest to be paid on tobacco bonds from the day in the condition to the date of the searcher's certificate, 24 Geo. 2. c. 41. f. 29. An estane may be inflicted upon a tobacco bond, before it be due, 24 Geo. 2. c. 41. f. 30.

Tobacco removed without certificate may be seized, 26 Geo. 2. c. 13. f. 2.

Claud Johnson relieved from his bond for securing duty on tobacco, 3 Geo. 2. c. 26. f. 8.

For other matters, see Customs, Plantations, Snuff.

Tobacco-pipe clay, not to be exported: 13 & 14 Car. 2. c. 18. fell. 8. 6 Geo. 1. c. 21. fell. 32.

Tobacco, Contains twenty-eight pound, or two flasks, as defined in the statute 12 Car. 2. cap. 32. See 3 fell. f. 66.

Toft, (Tiftam) A meallage or rather a place where a meallage formerly flood, but is decayed or casually burnt, and not re-built. It is a word much used in faces. Wood's Symbol, part 3. lit. Finus. fell. 26.

Toft, a place, (Vfamens) The owner of a right. Wood's Symbol, edit. 1727.

Toft, (Tint) Tol, Veile, or Teal) Signifies with us a net or cord to entrap or take deer; which is forbid to be used unlawfully in parks, on pain of 20s. for every deer taken therewith. Stat. 3 & 4 Will. & M. c. 10. c. 6. & 7.


Toleration Of dissenters. See Nonconformists.

Tol, To bar, defeat, or take away; as to toll the entry, i.e. to deny or take away the right of entry. Stat. 8 H. 6. c. 9.
TOU

May prefer, and delay for it in Sir Regis. Civ. Eliz. 710. They who claim falsely tolls by grant, ought not to be the centum in the sum mentioned in the grant, Ec. Parker 1725. Toll-travellers being to pay a nearer way, he that has it to repair the way, because he receives money for it. 2 Litt. Att. 585.

Tumult, a toll paid for besteads that are driven to a market to be sold, and do return unfed. 6 Rep. 46. This is also in toll and out-toll, mentioned in ancient charters: But if any one take toll where he ought not, the partie griev'd shall have an action on the cafe, or action of trepass, Ec. &c. 3 Nef. Att. 325, 426. Of tolls, and grants, customs and prelumptions for tolls, good, and not so, see 4 Med. 319. 5 Med. 361. Lavi. 1580, 318.

Collage, Is the same with tallage; signifying generally any manner of custom, or imposition. This word occurs in the statute 17 Car. 1, c. 15.

Coll-clough, The place where goods are weighed, &c.

Coll-roy, Is corn taken for toll ground at a mill: And an inditment lies against a miller for taking too great toll. 5 Med. 13.

Coll-shirts, A small dish or measure by which toll is taken in a market, &c.

Collaterals, (Tollembrm) An old excise, or duty paid by the tenants of some manors to the lord, for liberty to burn or fell al. Caritac. Rading. 821. Chart. 51. II. 3.

Coll. (Tolles) From the Six. Tel. c. Tributum, and Jef. federa), Is the place where mercants meet, in a city or town of trade.

Coll. (Tolls) Is a writ whereby a cause depend... A Court Baron, is removed to the county court, Old nat. brum. fol. 2, and so called, because it does tollere hominem from the one court to another, prefix to Co. Rep. 3. Pnce. crans reg. Poph. 22. 1. Rot. 17. Tolls placent signif- icat profundum per quom canja a jurisdictione curia tempora- tis tollitur. Tolls is also a tribute, or an exaction of any thing which is intended to be sold. 4 Litt. 527. So in Med. Par. West. Meretrum vendunt sol telle moli. Llei. Wrong, repine, extortion, any thing exacted or imposed contrary to right and justice.—Nee ale qum depredatum, nec tomaticia, nec incendia, roburis, tal- latis, sae au bujariimur perpetra eximia. Pat. 48 H. 3. in Brady hist. Eng. appog. p. 235.

Tomb. See Monument.

Toumme, (Tomtagium) Is a custom or impost paid to the King for merchandise carried out, or brought in ships, or such like vessels, according to a certain rate upon every ton. Cowell. edit. 1727. See Customs.

Toume, is a lord mentioned in Fleta, 2.hic. 75, par. 2. viz. Brevi muralis & servare: Which is to comb and cleanse his oxen.

Ejct. (from the Lat. Tintur) Is a French word for wrong or unjust; or de fin tant magne, in his own wrong. Civ. Rep. fol. 20. "White's" cafe. Wrong or injury is properly called tort, because it is wrong or crooked. Ec. on Litt. f. 158. See de son tort demenci, and 20 Tim. Att. 325.

Diftrae (Fr. Trtfairej) A wrong doer, a tref- pasier, Co. 2 par. f. 383. "White's" 33.

Ditto, is mentioned in Fleta, and other books, and also in documents in this case.

Justice, No person to be subject to torture in Scot- land. 7 Ann. c. 21.

Cottages, It is mentioned in fat. 19 Car. 2. c. 4. and in houses as often as.

Satta, A good debt to the King, is by the Phonion offered, 6 Rep. 177. Also to the exchequer, noted for, by writing this word est. to it, 9. d. 4 pecunia regi debi- tor. Sat. 42. 3. cap. 9. 6. E. 6. 15. Tournaments Martial exercises frequent in former ages, wherein the combatants fought with blunt wea- pon, and in great companies, in order to more men to the same combat, Sat. 1777. See Just. 12.

Out temps qu'il a marge et. That is, always ready, and is to do this present. This is a kind of plea in way of excuse or defence for him that is for any debt or duty belonging to the plaintiff. Cowell. edit. 1721. See 20 Tim. Att. 326, 319.

TRA

Ludwig, (Toumtagm und Vorouagem,) Is therowing or drawing a qty or barge along the water by men or beasts on land, or by another ship or boat fastened to her. Also that money, or other recompence, which is given by bargemen to the owner of the ground next the river where they tow a barge or other vellum. Civ. edit. 1727.

Ludav. (Oppidum, villa) A walled place or borough; The old boroures were first of all towns; and upland towns, which are not ruled and governed as boroures are, but towns, &c. included with wall. Finch 80. There ought to be in every borough a constable or tithingman; and it cannot be a town unless it hath or had a church, with several taxations and charges, when a town is decayed, so that it hath no houses left, yet it is a town in law. 1 Jdf. 115. Under the name of a town, or village, boroughs and its said cities are con- tained; for every borough or city is a town. Where a murderer escapes uncaught in the town, in the day time, the town shall be assized. 3 H. 7. c. 1. And a town- ship is answerable for telous goods to the King, which may be seized by them. 1 R. 2. c. 3. But see 3 Ed. 3. cap. 3. A custom may be alleged in a town, &c. See 20 Tim. Att. 316, 317.

Ludwicke, Is not to be a pippin recurrant con- vict, in Pec. 3. 5. How to deliver a schedule of fines, &c. to the thirff. 22 & 23 Car. 2. c. 22. And a duplicate into the exchequer. Ibid. How pub- lic-hon for discharging or concealing an inditement, &c. Ibid. Or not returning effect to the court of Exche- quer. 21 Hen. 7. c. 15.

Trabzane, Were little boats, so called, because they were made out of single beams or pieces of timber cut hollow. Florence of Worcester, p. 618. write, That utergre Rex in insolubis trabelae adhibitur.

Trabzos, Treas, By which hores, in their gears draw a cart, plough, or waggon; par tradusum, a pair of trac. Pace 49. 1. c. 49.

Trade, In general signification is traffic or merch- antize: Alto a private art, and way of living. All the King's subjects were to have free trade with France, Spain, &c. Stat. 3 Jac. 1. c. 6. But by 11 H. 6. M. c. 34. All trade with France was prohibited during the war, and importing goods was declared a common nu- mance, and the commodities were to be seized and burned; the vessels with their furniture, &c. to be forfeited; and landing goods, or afflicting therein, incurred a penalty of 500l., though the prohibition of trade to France was taken off and repealed by 9 Ann. c. 8. The King was endeavoured to prevent trade with Sweden, on the intended invasion of this kingdom, by the late King of Swe- den, 3 Geo. 1. cap. 1. All trade with Spain, during the war is prohibited; and no goods of the growth or manufacture of Old Spain, could be imported into Great Britain or Ireland, &c. from any place, mixed or unmix'd with commodities of any other nation, on pain of forfeiting the goods and treble value, and also the ship or vessel, with all her furniture, &c. 3 St. 13 Geo. 2. cap. 37. None of the King's subjects may trade to and with a nation of infidels without the King's leave, because of the danger of relinquishing christianity: And Sir Walter Scott stood at first for what he had seen the nation, as one of our King's, reciting, that he having a special trust and confidence, that such one, his subject, would not decline his faith and religion, licenced him to trade with infidels, &c. 3 Nef. Att. 321. As to private trades, at common law, none was prohibited to exercise any particular trade, wherein he had any skill or knowledge; and if he used it unwisely, the party grieved might have his remedy against him by action on the cafe, &c. By the 5 Eliz. A man must serve seven years apprent- iship before he can set up any trade; tho' it hath been reliev'd that the statute doth not prohibit the use of certain trades, which the publick would occasion a general. An inditement on 5 Eliz. cap. 4. for exercising a trade used at that time in Great Britain, quashed; it should have been England, there being then no such kingdom as Great Britain. 1 Str. 552. 2 Strange 788. 11 Rep. 53. If a bond or promise restrain the exercis of a trade,
Rebels transported and returning, or going into France or Spain, guilty of felony without clergy, 20 Geo. 2. c. 46.

Transportation, A declaration against the doctrine of transportation used in the church of Rome is requisite, and can only be done by ecclesiastical authority, 25 Geo. 2.

Transferee, (from the French Transfère, i. Transfère) 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 or to avoid the plaintiff’s bill, either by confessing and avoiding, or by denying and traversing the material parts thereof. High. Syst. part 2. tit. Chancery, sect. 54, 55. The formal words of which transfere are in our French fases see, in Latin abs. bus, and in the English without that. See Richm. fol. 237, and Standf. Praxig. cap. 20. See 20 Vin. Air. tit. Transfere.

Transferee an indictment, Is to take issue upon the chief matter, and to conrtradict or deny some point of it. As in a pretension against A. for a highway overflowed with water, for default of fouring a ditch, Or. A. may transfer both the matter, that there is no highway there, or that the ditch is sufficiently foured; or otherwife he may transfer the cause, v. That he hath not the land, or that he and the whole etair. Or. have not used to four the ditch. Lam. Erven. tit. 4. cap. 13. p. 374, 378. Cowell, edit. 1727. See 20 Vin. Air. tit. Traverfe.

Transfeve an office, Is to prove that an inquisition made of lands or goods by ejector is defective, and untruly made. Cowell, edit. 1727.

An office returned by an ejector in Chancery may be transferred, and resubmitted to the court, 2 Ed. 3.

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 returned, 18 H. 6. c. 6.

No protection to be allowed to a tenant in the false facias. 23 H. 6. c. 16.

Rights saved that are not found by the inquisition, 2 & 3 Ed. 6. c. 8.

Travehe given, where the King is intituled by double matter, 2 & 3 Ed. 6. b. 8. f. 7.

Traverferm, A ferry. "Tit mentioned in the Magnific. 2. tom. 1002.

Traverfermen, Of those fishermen who used unlawful arts and engines to destroy the fish upon the river Thames, were fined, tethered, others, the 45 parl. 17 Geo, and the 46 parl. of Land, 19, 19. Hence to trowle or trowle with trowling-line for pikes.

Trowle, See Indicies of Trowlhabon; and see copies of several commissions granted to them by Edward the Fourth in Spelman’s Glosary, to be Trawlyfern. The common people in those days called them Trawlyfern, good fish, trade basinum. Edward the first in his thirty-second year, finds out a new writ of inquisition, called Trowlhabon, against intruders on other men’s lands, who, to oppose the right owner, would make over their lands to great men; against batters hired to beat men, breakers of the peace, rascallers, incendiaries, murderers, righers, false affiars, and other such malefactors: Which inquisition was so strictly executed, and such fines taken, that it brought in exceeding much treasure to the King. Chron. fol. 111. See Plac. parlamentarias, fol. 211. & 280. And in a 3. R. 380, And in a part forgery of Land, 6. 19. Hence to trowle or trowle with trowling-line for pikes.

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and expected 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 declarations of treason, and none other; any act or acts of parliament 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 statute is, that no offence is at this day high treason, unless it is declared to be so by the 25 Ed. 3. § 5. cap. 5. or has been made to by some statute subsequent to the fifth year of the reign of Queen Mary.

And no offence is to be adjudged high treason, unless it be clearly, and without argument or inference, within the meaning of some act of parliament; for no statute, whereby any offence is declared to be, or made, high treason, is to be extended to equities. Plowd. 296.


And it seems to be always agreed, that, what would have made a man an accessory before the fact, in any other felony, does make him a principal in high treason.


It has been determined, that the receiving and aiding a traytor, after the offence has been committed, does not amount to counterfeiting the King's money, make a man a principal in high treason.


By the 7 Ann. cap. 21. par. 1. It is enacted, That after the first day of July 1709, such crimes and offences, which are high treason within England, shall be counterfeited, 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 definition of high and petit treason was not known to the law of Scotland; for every offence, which was high treason in England, was by the law of Scotland petit treason. 5 Stat. Abp. 1699.

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. 2. par. 7. enacted, That murder under trutl, which was by the law of Scotland, treason, shall be the time be only adjudged and deemed to be a capital offence.

1. Who are in a 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 a 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.


Now the duty of allegiance to the King is so inseparable from a natural born subject, that, notwithstanding all he can do to renounce it, and transfer his submission to a foreign prince, if he practises any things, which would be high treason in any other person, it is so in him.

1. Int. 13. 2. 1. Hawk. P. C. 35. 2. But ancient times, if a madman has been guilty of any attempt upon the life of the King, it was high treason.

But since the statute made in the 25th year of the reign of Ed. 3. the words of which are, when a man doth constitute himself for the sake of the Lord or the King, it has been held that a man, who is non campus mensis, is incapable of compassing or imagining; and, consequent-
ly, that such a one cannot be guilty of that species of high treason, which consists in compassing or imagining the death of the King, as 3 Ed. 3. c. 35. says.
By the 33 H. 8. cap. 20. par. 1. It was enacted, * That, if any person shall commit high treason, when he is of good and whole memory, and after accoutation, or confession thereof shall fall to madness, the treason done by such person may be tried in his absence; and that, if such person, if found guilty, flewer such pains and forfeitures, as if he had been of good and whole memory, and had been personally arraigned.*
And par. 2. It was enacted, * That if any person shall be attainted of high treason, and afterwards fall into madness he shall, notwithstanding such madness, have and suffer execution."
But this cruel law was, as it was highly reasoneable it should, soon renounced; for the design of all punishment in example, ut pesa ad pauses, metus ad comtes, perenniat: But, when a madman is executed, it is both a miserable spectacle, and an instance of extreme inhumanity and cruelty to the person of one, for such a man can be no ex-
 ample to others.
"39 Ed. 4. 6. The husband of a Queen regnant may be guilty of high treason against such Queen; because he, in the eye of the law, a distinct perfon to divers purposes from her husband. 39 Ed. 8."
An alien, who comes into the kingdom in a hostile manner, is not guilty of high treason; because he owes no allegiance to the King. 39 Ed. 11. 7. Rep. 6. 1 Lord Rom. 1. Salt. 632.
But a man may be born subject of a foreign prince came at first peaceably into the kingdom, and has lived there some time, he may commit high treason: For, as he has enjoyed the protection of the King, a local allegiance is in return due from him. 7 Rep. 6. Colbeck's case. 39 Ed. 5. H. 6. 271. Lord Rom. 1. Salt. 632.
Ambassadors 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. 39 Ed. 153. 7 Rep. 6. 1 Hawk. P. C. 35.
The offence of high treason may be committed against any person, who is 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 subjec-
tion are due in return for this protection. 39 Ed. 7. H. P. C. 42. 1 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. 39 Ed. 7. 39 Ed. 12. 1 Hawk. P. C. 35.
By the 11 H. 7. cap. 1. It is enacted, * That no per-
son who attends upon the King for the time being, to do him true and faithful service of allegiance, or is 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 trea-
sion 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. 39 Ed. 7. 1 Hawk. P. C. 104. 1 Hawk. P. C. 35.
It was indeed refolved, after the restitution 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. K. B. 15. The case of the Regicides.
But this resolution does not contradict the doctrine just laid down: For it had been first refolved, by the fame
judges, that this prince, notwithstanding he had been for some years hindered from exercising the regal power, had been at all times a King de facto, as well as King de jure; and it is certain, that no other person but he, during that time, been in the actual possession of the crown. Ed. 15. 1. Keb. 315. 454. 1 Hawk. P. C. 35.
The crime of high treason may be committed against the person on whom the crown rightfully defends, before he is actually crowned; but it has been determined, by all the judges, that the coronation of a King or Queen is only a solemnity. 3 Inf. 7. Worcester's case. H. P. C. 12. 1 Hawk. P. C. 35.
But, if the person who is next heir to the crown, is of the Rummy religion, or has married a papist, the crime of high treason cannot be committed against such per-
son; for by the 1 W. & M. bl. 2. e. 1. par. 9. It is en-
crated, * That every person, who is or shall be recon-
ticed to be a popish minister, of the see or church of Rome, shall forfeit the popish religion; or for the amended.
liberty a papist; 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 exercise any worship, authority, or jurisdiction, within the same; and, in all and every such case or cases, the people of these realms shall be, and hereby are, abovled 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 confot, or of their eldest son and heir; and thereto be provably attained of overt deed.
This clause does not expressly mention a Queen reg-
nant; but the construction has been, that such a Queen is within the meaning of the words our Lord the King. 39 Ed. 7. 1 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 confot, as is not within the letter of the man-
This clause does not extend to any Queen dowager; for although she retains the title of Queen she is not the comfort of a King regnant. 39 Ed. 8. 1 H. P. C. 124. 1 Hawk. P. C. 37.
And if the wife of a King regnant is divorced a vincula 
matriamini, it is not high treason to compass or imagine her death, because the cattles to be his comfort. 39 Ed. 7. 1 H. P. C. 124. 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 is high treason to compass or imagine his death. 39 Ed. 8. 1 H. P. C. 12. 1 Hawk. P. C. 37.
It is said, that the eldest daughter of a King or Queen regnant is not within the meaning of this clause. 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 proclamed 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 Inf. 9.
But
But in another book it is doubted, whether any collateral bar apparent is within the meaning of this clause. 3 H. P. C. 135.

As the words in this clause compell 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 B. & C. 6. 1 Hawk. P. C. 35.

But whoever any 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 compell or imagine.

If divers meet to consult the destruction of the King, this is, in every one of them, an overt act of compelling or imagining his death. 3 B. & C. 12. 1 And. 1. 104. 

Kid. 17. 21. 1 Hawk. P. C. 56.

Nay, the knowledge of a design to destroy the King, if accompanied with any circumstance of affent, or approbation, is an overt act of this species of treason. 3 B. & C. 14. H. P. C. 127. Kid. 17. 21. 1 Hawk. P. C. 38.

If a man, knowing that a meeting is to be held to consult the destruction of the King, goes to such meeting, this, albeit where he lays nothing, is evidence of his affent to, or approbation of, the traenterous intention. Kid. 17. 21. The cause of the Regicides. 1 Hawk. P. C. 57. 

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 affent to, or approbation of, the treasonous design. Kid. 17. 21. The cause of the Regicides. 1 Hawk. P. C. 57.

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 compelling or imagining the King's death; because it has a direct and natural tendency to bring his life into imminent danger. 3 B. & C. 13. Dyer 238. 1 Hawk. P. C. 57.

The assembing of men, with an intention of compelling the King to comply with a certain demand, is, for the same reason, an overt act of this species of treason. 3 B. & C. 12. H. P. C. 127. Kid. 21. Mar. 621.

If divers persons are assembled for the purpose of imprisoning the King, this is likewise an overt act, in every one of them, of compelling or imagining his death; because it is very likely, that such imprisonment will end in his death. 3 B. & C. 6. 12. H. P. C. 11. 1 Hawk. P. C. 35.

It has been doubted, whether an assembing 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. Brs. Treason. p. 24.

But it seems to be the better opinion, the assembing of men, with such design, is an overt act of compelling 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 B. & C. 6. 12. H. P. C. 11. 1 Venr. 376. 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 compelling or imagining the King's death; for such levying of war, which is by this statute declared to be one distinct species of high treason, can never be ascribed to one of the other species of high treason; because, if it should be held to be, two distinct species of high treason would be confounded. 3 B. & C. 14.
Clipping and impairing 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 priets to remain in the kingdom, or for persons in popish feminities not priets, not to return and submit, 12 El. c. 4.

Reconciling any person, or being reconciled to the see of Rome, putting in use the Pope's bulls, &c. made treason, 13 El. c. 2. 23 El. c. 1. 3 Jac. 1. c. 4. fett. 22.

Corrupting to enlarge prisoners committed for treason, 14 El. c. 2.

No paft attainer to be reverfed after execution, 28 or 20 El. c. 2.

Certain offences by words made treason, during the life of King Charles 2d, 13 Car. 2. b. 1. c. 1.


Repairing to France, 3 W. & M. c. 13. 9 W. 3. c. 1.

Corresponding with the late King James made treason, 9 W. 3. c. 1.

Corresponding with the pretender, 13 W. 3. c. 3. fett. 26.

To compast the death of the Princes Ann, 15 W. 3. c. 6. f. 15.

Endeavouring to hinder the successe, 1 Ann. b. 2. c. 17. f. 3.

Officers or soldiers beyond sea, corresponding with enemies, 2 & 3 Ann. c. 2. f. 24.

Raising mutiny, disbelieving or refisting officer beyond sea, or felony, 2 & 3 Ann. c. 20. f. 35.

Offences may be tried in K. B. 2 & 3 Ann. c. 20. fett. 36.

Writing in defence of the Pretender's claim made treason, 4 Ann. 8. 6 Ann. c. 1.

Treason to pursue the depoing the King, or to repeal certain acts, 21 Ric. 2. c. 3. &c.

For several old condemned opinions relating to treason and the prerogative, fee 21 R. c. 12. 1 H. 4. c. 3.

Nothing shall be adjudged treason but as was ordaind by the fature of Ed. 3. 1 H. 4. c. 10.

Clipping, wafting, &c. of money, treason, 3 H. 5. c. 6.

Ecape of prisoners committed for suftrication of treason, declared to be treason, 2 H. 6. c. 17.

Serving the King for the time being inures no forfeiture, 1 H. 7. c. 1.

Willful poisoning made high treason, 22 H. 8. c. 0.

Practicing against the establishment of the successe 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.

Best of felony taken away in cafes 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 figner, made high treason, 27 H. 8. c. 2.

A repeal of all treasons fince 25 Ed. 3. 1 Ed. 6. c. 12. f. 9. with exceptions, f. 8.

Presching, &c. against the King's title, the third offence, 1 Ed. 6. c. 12. f. 6. repealed, 1 M. b. 1. c. 1.

High treason to deny the supremacy, 1 Ed. 6. c. 12. f. 7.

To interrupt the successe of the crown, 1 Ed. 6. c. 12. f. 9.

The third offence of affirming that the King is a heretick or usurper made treason, 5 & 6 Ed. 6. c. 11. repealed 1 Mar. b. 1. c. 1.

With-holding the King's cattles or flores, &c. made treason, 5 & 6 Ed. 6. c. 11. f. 5. 14 El. c. 1.

It was the high treason to counterfeit coins current here, or the queen's sign manual, privy signet or privy seal, 1 M. b. 2. c. 6.

8 U
T R E


Whereas a wife murders her husband, a servant his master, or a stranger, or an ecclesiastic a prelate, or to whom he owes obedience, every one of these is petit treason. 1 H. P. C. 24. 3. 2. 1 Haw. P. C. 88.

As every petit treason implies a murder, it follows that the mere killing of a husband, mafter 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 person, it does not amount to this offence. 1 H. P. C. 24. 1 Haw. 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 petit offender, and find him guilty of manslaughter. 1 H. P. C. 378.

Some offences which are not mentioned in the 25 Ed. 3. 1 f. 2. were before the making of this statute petit treason, 1 Haw. P. C. 87.

If a woman had procured a stranger to murder her husband, and the wife was not then present at the perpetration of the murder, it was petit treason. 3 1f. 20.

It was also petit treason, for a servant to counterfeit the feal of his master. 1bid.

By the 25 Ed. 3. 1 f. 2. after declaring divers offences to be petit treason, it is enacted, That, because there are in divers cases of petit treason a like matter of peril, it is made by statute in time to come, which a man cannot think of or declare at present, if any other case, supposed to be treason, which is not specified above, doth hereafter happen before any one of the judges, 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 deemed a treason or other felony. 1bid.

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. 1 f. cap. 1. par. 3. the power itself is taken away, it being thereby enabled, That no ad, or offence, shall be taken, had, deemed or adjudged, to be petit treason, but only such as 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. 1bid.

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. 1 f. 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 1f. 12. 21. 18 Eliz. 1. 1. 1.

The distinction 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 treason.

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 treure, which was by the law of Scotland treason, shall for the time to come be only adjudged and deemed to be a capital offence.' 1bid.

This may be an accergency, either before or after the fact, in petit treason. 3 1f. 20. 21. 138.

At the Common law, an accergency 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 April, 1554, or hereafter, shall embolden, 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. Stat. 5. 2. declared to be petit treason where a wife layeth her husband, 3. If a wife is married to B, during such inter marriage has been carried to C, this bill woman, although she is not a wife within the meaning of this clause; because the second marriage was for a feit seuit. 1 H. P. C. 327.

If a woman after having been divorced causa adulterii vel furii, that is, after the divorce, makes or is made by another man, the former husband, is, although the fact be committed in her absence, guilty as an accessory to petit treason, 3 1f. 20. 4 1. P. C. 25. 1 Haw. 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 an accessory to murder. For the principal is only guilty of this crime; and the maxim is, Accessitus fententiae sui est principalis. 3 1f. 20. 139. H. P. C. 21. 25. 1 H. P. C. 379. 1 Haw. P. C. 88.

If a wife, however, after having procured a stranger to kill her husband, was, by agreement with such stranger, the principal in committing the murder, which was committed, the is, although the wife was not in the room at the time of the perpetration thereof, guilty of petit treason: For, as the murderer was, in this case, emboldened, by the expectation of having her immediate assistance; if the same had been wanted, to commit the crime; he is in judgment of law, as much a principal, as if he had had her, with a weapon in hand, ready to aid him. Mor. 91. 1 H. P. C. 25. 1 Haw. 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 or murder only. 3 1f. 20. H. P. C. 25. 1 Haw. P. C. 88.

But, when we kill her husband by the procurement of a stranger, the latter seems to be guilty as accergency to petit treason. 1 Haw. P. C. 88.

By the 25 Ed. 3. 1 f. 2. it is declared to be petit treason, where a servant slayeth 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, nor one within the letter 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 1f. 20. Plowd. 86. 1 Haw. P. C. 87.

If a child kills his father, or his mother, this, although it be 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 similitude, or a minora ad maius. Plowd. 86. 3 1f. 20. 22. 23. H. P. C. 24. 1 Haw. P. C. 87.

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 1f. 30. H. P. C. 24. 1 Haw. P. C. 87.

A servant, after having quitted his master's service a year, killed the person who had been his master. This was petit treason, because he appeared to be guilty of the crime, committed in consequence of malice conceived against the person killed while the murderer was in his service. Bras. Cor. 116. Plowd. 226. 3 1f. 20. H. P. C. 23. 1 Haw. P. C. 38.

It has been just now flown, in treating of that species of petit treason, which consists in the murdering of a husband, or a wife; in what case the wife is a principal in, or accergency to, petit treason, or an accergency 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 accergency to petit treason, or an accergency to murder only. 5 Dods. 136. 4.
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By the 25 Ed. 3. 5. 2. 2. It is declared to be petty treason, when a man seizes or religious, slayeth his prelate, whom he owes obedience. If an ecclesiastick, who enjoys a benefice in the diocece of A. within the province of B. slays the archbishop of the province of B. this, although he is not the immediate superior of such ecclesiastick, seems to be petty treason. 1 H. P. C. 391. If he slays a beneficer in different dioceces, it is petty 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 petty treason, although he does not enjoy any benefice, or care of souls, within the diocese of this bishop; because he professed, at his ordination, a canonical obedience to such bishop. Ibid.

For more learning on this subject, see 5 Esc. Abr. tit. Treson.

Treson, (Thos. Harrison.) Signifies riches and wealth; and as the King's treson is the treason of war, and the honour and safety of the King in time of peace, permanent bell & ornamentum probis; 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, in whose ground forever they be found. Cowell, edit. 1727.

Tresurer, (Thos. Harrison.) Is an officer to whom the treasure of another is committed to be kept, and truly disposed of: the chief of these is the treasurer of England, who is a lord by his office, and one of the great officers of the land, under whom the King's orders are given. The treasurer of any province 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. Angl. lib. 2. cap. 15. See more belonging to this office, 26 Ed. 6. 17 Ed. 3. 5 Sc. 15 17 Ed. 4. 5. 1 H. S. 20. and 1 Ed. 6. 13. This high officer hath by virtue of his office, the nomination of all eccentors yearly throughout England, and given 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 treasurer of the King's household, hath power with the controller and speaker of the House of Commons, without commission, to hear and determine treasons, m壁画s, and other matters concerning the King's peace. Stannif. Pr. Cor. lib. 3. cap. 5. In Helym. 2. cap. 1, there is mention of the treasurer of the navy, who is called the master of the yard. 27 Ed. 3. fl. 2. cap. 18. 35 Eliz. cap. 4. treasurer of the King's chamber, 26 H. S. 3. 33 H. S. 39. treasurer of the King's wardrobe. 15 Ed. 3. fl. 1. cap. 3. 25 Ed. 3. fl. 5. cap. 21. whole office you have well set out in Fleta, lib. 2. cap. 14. Treasurer of the county for poor soldiers, 25 Ed. 4. And most corporations through the kingdom have an officer of this name that receiveth their rents, and disfritheth their common expenses, and is of great credit among them. Cowell, edit. 1727.

Treasurer in Cathedral Churches, A dignitary who was to take charge of the sediments, plate, jewels, relics, and other treasure of the said church. But at the time of the reformation, when some who abhorred idols did commit sacrilege, and took away the infinite treasure of cathedral 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.

Treasurer of the County, To be chosen by the justices of peace, 43 Eliz. c. 2. sect. 14. See County rate.

Treasurerstrate, (Thos. Harrison inven,) Signifies in our civil law as it is in the Civil, Peter's, deposition pecuniae, eius non extat memoria, ut jam dominum non habet, with which definition Bradley agrees: And though the Civil law give it to the finer, 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 prerogative, or by prescription, as appears, Bradl. lib. 3. tracts. 2. cap. 3. num. 4. The punishment for concealing treasure found, is imprisonment and fine. Stannif. Pr. Cor. lib. 1. cap. 42. Feather. Abdomen, p. 187. But if the owner may any ways be known, then it does not belong to the King's prerogative. Britton, cap. 17. says it is every subject's part, as soon as he has found a treasure, to inform the owner thereof to the coroners of the county, &c. See Kitchen, fol. 20. ann. 1 & 2 P. M. c. 15. This was antiently called findinga, of finding the treasure. Led. Hist. 1. c. 11. See 2 Ipt. fol. 152, and 20 Vin. Abr. 414.

Trecutry, Signifies sometimes the place where the King's lands are bestowed, and at other times the office of treasurer. Cowell, edit. 1727.

Trenchet (Terictetum,) A tumulur, or cucking flock. 3 Pur. Ipt. fol. 319. See Echek. It was also a great engine to call flocks to better walls. Abr. Part. 1634.

Treescs, The proprietors of trees cut down or taken away how recompensed and the offenders punished, 43 Ed. c. 7. 15 Cor. 2. c. 2. f. 2. Ingraving oak bark prohibited, 1 Stc. c. 1. cap. 22. sect. 19. Penalty of selling oaks to be barred, 1 Jac. 1. c. 22. f. 22. The houes of persons suspected to have cut or taken them away, to be searched, 15 Cor. 2. c. 2. f. 3. Persons destroying plantations punished as trespasser, 22 & 23 Cor. 2. c. 7. f. 5. 1 Geo. 1. c. 2. 49. 6 Geo. 1. c. 2. 49. See 10 Vin. Abr. 2. c. 30. f. 6. As felon, 9 Geo. 1. c. 2. f. 1. The neighbouring inhabitants, 1 Geo. 1. c. 2. f. 43. 6 Geo. 1. c. 16.

And the hundred answerable for damages, 9 Geo. 1. c. 22. f. 7. 29 Geo. 2. c. 38. f. 9. See Echek. and 20 Pr. c. 2. 1514—45. Echek. (Terictetum, i.e. Wheat.) In the stature of 51 H. 3. breadth of tree seems to be that bread which was made of fine wheat. Cowell, edit. 1727.

Treemagnum, (Tremifum, Tremifum,) The season for fowling lumen-corn about March, the third month, to which the word may possibly allude. For corn sowed in March is by the French called tremis and tremis, and sometimes mars or marisfe, which the Italians call mortellin or mortail. Tremisium was commonly opposed to hibernation, i.e. the season for summer corn, barley, oats, beans, &c. for the season for winter-corn, wheat and yew. Cowell, edit. 1727.

Trecuta, A word used for granite, in Mon. Aug. p. 470.

Trecutheato, (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 J. S. uni tremiorum territorio. Cowell, edit. 1727.

Trecutheo, (Francis Fr. trancher, to cut,) A trencher, or dke newly cut. Ed. 4. dke.

Trental, (Tractaul, An office for the deaf that continued thirty days, or confuting of thirty maffes, from the Italian trenta, that is, trinta, mentioned 1 Ed. 6. 15. Tregret, A great engine to throw flocks against a wall in forming a town. It is mentioned in Knight, anno 1382.

Trepalls, (Transfebri,) Signifies any translation of the law under treatment, felony, or misprision of either. Stannif. Pr. Cor. fol. 38. where he says, Trep. f. 4. for a lord of the parliament to depart from the parliament without the King's licence, is neither treason, nor felony, but trepall. But it is not commonly used for that wrong or damage, which is done closer to the King in his person, or by one private man to another; and in this signification it is of two sorts, trepall general, otherwise termed dke, and trepalls special, otherwise called trepalls upon the oke, and the like, which are without force, howbeit sometimes they are contended. How to distinguish the forms of their writs or actions, see
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 an action of trespass local, and trespass trasnitory. Trespass local is that which is so annexed to a place that it cannot be moved without being injured in the large or small, and whenever a trespass, as many injurious acts are distinguished by particular names, as trespass, murder, fraud, and other names, 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 sort is called a trespass upon the place. And the proper remedy for the party injured is by an action upon the place. 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 publick, the proper remedy in every such case is by an indictment, or by信息系统; 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 case 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 considered and punished as an offence against the publick.

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 so. And it is at the election of the injured party, whether to set forth a writ of general trespass, that is, or one that is not returnable. The latter sort of writ is called vicontial writ: Because the matter therein complained of is to be heard before the sheriff to whom it is directed. But, as the vicontial writ of general trespass is at this day very seldom found out, 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 Rep. 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 act which was at first lawful, but becomes afterwards a trespass with force ab initio.

1. 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, 46, 1402. Str. 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 case, 46. Fitzh. N. B. 93. Ld. Raym. 1402. Str. 635.

This action does not lie for any injury which is the consequence of a mere trespass local, where no action has been done, there cannot have been any force.

If the person intited to take does not, after having received notice of their being set out, fetch them away in a reasonable time, he is liable to an action upon the case for the trespass, and he may recover the injury done him upon the land: But an action of trespass vi et armis cannot be maintained; because this injury arises from a mere non-feasance. Ld. Raym. 188. Stapfett v. Megford.

So, if A. ought to repair the bounds of a river, neglected to do it, and for want of this being done the ground of B. is overflowed, the proper remedy of B. is by an action upon the case: Because the injury arises from a non-feasance. Bro. All. for the case, 46. Fitzh. N. B. 93.

This action does not lie for any injury which is occasioned by a lawful act; because such an act can never be accompanied with what the law calls force.

If one man fix a stop to the carrying of water from his house, and the water thereby carried falls and does damage upon the ground of another, this cannot bring an action of trespass vi et armis, for, as the force of this act is such as is found in every such case, the damage is from a mal-feasance: But the remedy is in this case by an action upon the case. Str. 635. Reynolds v. Clarke. Ld. Raym. 1402.

It is indeed laid down generally in some books, that, if one man fills up a ditch which has long been a watercourse, and by that act the land of another is overflowed, the latter may maintain an action of trespass vi et armis. Fitzh. N. B. 89. Bro. All. for the case, 46.

But in a modern case it was held, that this action would not lie in such case, provided the ditch was in the land of him who filled it up, because it was lawful to fill this up; and that, if any injury is consequent to this, it is followed from thence to another, the remedy is an action upon the case. Ld. Raym. 1402. Reynolds v. Clarke. Str. 636.

It is laid down, that a satisfaction may in some cases be recovered in this action, as well for an injury which has actually been the consequence of a trespass with force, as for one which has been the necessary consequence thereof.

If A. breaks the hedge of B. to the value of four pence, and a beart of common enters through this breach into the close of B. and does damage, it seems, that B. shall recover damages for the whole injury in an action of trespass vi et armis against A. for the breach made, because, as the judgment in an action of trespass vi et armis is, quod cepit pro su, and that in an action upon the case, is, quod fit in miserievndia, an injury, which was only proper for the latter, ought not to have been contained in a declaration in the former action. L. Raym. 27. Collet v. Tophet. Str. 137.

But if one injury, for which the proper action would otherwise have been trespass upon the case, is, after laying an injury proper for a declaration in an action of trespass vi et armis, laid in the same declaration with a per quod; the judgment in an action of trespass vi et armis may, although the verdict against the defendant is a general
ene, be well pronounced: because that, which comes under the per quod, is not to be considered as an independant faltificial i jury, but as laid merely in aggravation of damages. Ed. Raym. 323.

It is laid down in two books, that, if the barrel of cattle, which have been lent to him to plough his land, with any of them, the owner thereof has his election to bring an action of trespass vi et armis, or an action upon the case. 3 T. R. 57. 3 T. R. 66.

But in some other cases it is laid down generally, that the bailee of cattle, who kills any of them, is not liable to the owner of the cattle, because he come lawfully to the possession thereof: But that the proper remedy is an action upon the case. 3 T. R. 57. 3 T. R. 66. Prov. v. Collet.

And this is left reasonable now than heretofore; for if the injured party has in any case such an election, he may in every such case, by calling to bring an action of trespass upon the case, and intimating himself to full costs, albeit he does not recover damages to the amount of forty shillings. 3 T. R. 273. Collet v. Collet.

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. 3 T. R. 273. Collet v. Collet.

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.

It is in general true, as has been shewn under the lift head, that no injury, which has been occasioned by a lawful act, is trespass with force. But in some cases an all, which was 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. 3 T. R. 154.

If J. S. who has disfrained a beast damage-feasant, afterwards kills or 

the same, he becomes a trespasser with force ab initio; he had indeed by law an authority to disfrain this beast: But, as this extends only to the keeping it as a pledge to enforce the making satisfaction for the damages of the owner, or to recover the same, it is not an abuse of this authority. 8 Rep. 146. The fine carpenters cafe. 3 T. R. 359.

But every meddling with a thing, which has been disfrained, does not amount to such an abuse of the general authority given by law to disfrain, as to make the disfrainer a trespasser with force ab initio.

If a man who has disfrained armour fences 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. Cro. Eliz. 783. Dunamore v. Kere.

But having disfrained raw hides tanned them, he becomes, notwithstanding that these would otherwise have rotted, a trespasser with force ab initio: Because this, altho' it seems to be a benefit to him, may be an injury to the owner; for he can never be sure of having his own hides again, the nature of them being changed by the tanning that they cannot be known. 3 T. R. 359.

And, in the case of a diffires for rent, an injurious meddling with what has been disfrained does not make the disfriar a trespasser with force ab initio.

For by the 1 Geo. 2. cap. 19. par. 19. it is enabled, "when it is not made justly due, and any unlawful act shall be afterwards done by the party disfraining, or by his agent, the diffires 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 reasonable times; yet if a man, who went lawfully 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. 8 Rep. 146. The fine carpenters cafe. 3 T. R. 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-feasance, can never be a trespasser with force. 8 S. 1. 155.

If J. S. who has disfrained a beast damage-feasant, refuses to deliver it on a tender of amends before the complaint thereof, this is an abuse of an authority given him by law to disfrain; and the owner of the beast may recover damages for the detention: But, as the injury arises from a non-feasance, J. S. does not become a trespasser with force ab initio. 8 Rep. 146. The fine carpenters cafe.

It is in general true, that a man, who is guilty of any positive abuse of a particular authority given him by law becomes a trespasser with force ab initio.

A confable, who had the warrant of a judice of the peace to search the house of J. S. for stolen goods, pulled down the clothes of a bed in which there was a woman, and attempted to search under her shift, it was held, that by this abuse of his authority he became a trespasser with force ab initio. Claty. 44. Ward's case.

But by the 17 Geo. 2. cap. 28. par. 8. it is enabled, "That where any dib[s]h shall be made by any overseer, by virtue of a warrant of diffires, for any money justly due for the relief of the poor, the party disfraining 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-feasance, a trespasser with force ab initio; as to every thing that has been done under this writ. Brs. Fauv. impr. 5. pl. 5. pl. 7. pl. 12. pl. 23. 1 T. R. 378. Salt. 409. 3 T. R. 359. Raym. 146.

But, if a bailiff has by virtue of a warrant from a sheriff 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. Brs. Fauv. impr. 5. pl. 22. 1 T. R. 378. Cro. Car. 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. 353. pl. 18. 3 T. R. 632.

A man, who is guilty of an abuse of an authority or licence, and altho' he is a principal one, becomes 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. 8 T. R. 359. Collet v. Collet. 3 T. R. 359. Bro. Abr. for le cafe. 99.
The reason of the difference, between this case of a positive abuse of an authority or licence in fact, and that of a personal abuse, viz., the authority or licence in law, is, in one book laid to be, that the abuse in the latter case is deemed a trespass with force ab iniis: Because the law intends from the sublebent tortious act, that there was from the beginning a design to be guilty thereof. 8 Rep. 146. The six carpenters' case.

But this reason, which equally applies to both cases, is by no means conclusive: For it may be as well intended in the former case, from the sublebent tortious act, that there was from the beginning a design of being guilty thereof. Perhaps the difference between the two cases may be better accounted for in the following manner.

In the first, where the law has given an authority or licence, it seems reasonable, that the same law should, in order to secure the persons, who are without their direct assent made the objects thereof, from all positive abuses of such authority or licence, whenever either of these is positively abused, make the same void from the beginning: or at least, if the other party shall prove there is no such intention as if he had acted without any authority or licence. And this agrees perfectly with the maxim Actus legis nemini facit iuris. But in the other case, where a man, who was under no necessity of giving an authority or licence to any person, has thought proper to give one to a certain person, who is afterwards guilty of a wrong thereof, there is no reason that the law should interfere; and make all that has been done, under the authority or licence by him 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 Dall. 156.

The interpretation of the law in such cases, would, moreover, be quite contrary to the maxim, Vigilantibus non dormientibus feruit lex. 5 Bac. Abr. 156. For more learning on this subject, see 20 Vin. Abr. and Bac. Abr. tit. Trespass.

Errata.

Errata, (Fr.) is used by Britton, cap. 29, for palavers.

Errataque, To turn or divert another way; as tresphareiam, to turn the road. Cowell, edit. 1727.

Chart, King John.

Triall, (Triallt) Is used for the examination of all causes 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 indictment of treason or felony, shall try him without any oath by his peers upon their honour and allegiance; but in appeal to the last of any subject, they shall be tried per eadem hominum. If ancient demesne be pleased of a manor, and descent, this shall be tried by the record of demesne. Baldur, excommenagement, lawful- neds of marriage, and other ecclesiastical matters, shall be tried by the bishop's certificate. Of the ancient manner of trial by combat and great affair, see Combat and affiance, as also Shaw's Pl. Cor. cap. 1, 2, 3, and twelve more. Trisiol of condumsinis lites contributis, eorum justicium habeat certamin. It is usual to ad the criminal how he will be tried; which formerly was a very significant question, but it is not so now, because formerly there were several ways of trial, viz., by battle, by ordeal, and by jury. And when the criminal answered the question, By god and his country, it signified 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.

2. Of giving notice of trial, and of contraverting a trial.

3. What is to be tried by the court, and what is to be tried by the record.

Every question which arises concerning any matter of law, is to be tried by the court in which the cause depended. 1 Inf. 125.

It is agreeable to common sense, that civility in arts and sciences, is such a thing as difference, and it is a known maxim of law, that ad aggressio juris non respondent iuris. Ibid.

It is the province of the justices to determine what the meaning of any word or sentence in an act of parliament is. Bro. Trial, pl. 143. 2 Inf. 611.

If a question arises, whether a certain sentence is a maxim of law, this is to be determined by the justices, Bro. Trial, pl. 143.

If a man was seized of a house for life had at the time of his death any goods therein, his executor or administrator shall have five angels and eggs to fetch them away in reasonable time; and the justices before whose cause depended shall judge what is a reasonable time. 1 Inf. 56.

The reasonable abatement of a fine, which has been assessed by the lord of a manor on the admittance of a tenant to a copyhold estate, shall be distrained by the justices upon the execution of the fine, it appearing to them. Ibid.

If a question arises concerning the existence of a general custom of the realm, this is to be determined by the justices: Because every general custom is a part of the Common law. Bro. Trial, pl. 143. 12 Mod. 572.

It is in general true, that if a question arises concerning the existence of a custom of a particular place, it is to be tried by a jury. 1 Inf. 74. 2 Blis. 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 construction of the deed. 1 Inf. 125. Bro. Condition, pl. 183. Ipsom. 146.

But if the question be, Whether a deed has been sealed and delivered? This which depends upon a matter of fact is to be tried by a jury. 1 Inf. 225.

It is the province of a jury to try the fact, whether any rasure or interlineation in a deed was made before the delivery thereof. Ibid.

But the question, Whether the rasure or interlineation 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 same court; for the practice of every court is the law of such court. 9 Rep. 30. Atob of Sirat McCarel's cafe. 12 Mod. 573, 573.

If a question arises concerning any matter of record, this can only be tried by the record itself. 9 Rep. 50. Atob of Sirat McCarel's cafe. 1 Inf. 117. 2 Rob. Abr. 574.

The reason is that a record imports such verity in itself, that no averment contrary thereto is to be received. The receiving of any such averment would also be attended with great inconvenience; for if one averment could be received in order to contradic it, another might afterwards be received in order to contradict the second record; and so this might go on ad infinitum. 1 Inf. 117. Jenk. Cent. 59.

In the case where a fact is joined upon the plea of not tried record, the trial must by the record. Bro. Trail, pl. 46. 2 Rob. Abr. 574.

If a question arises 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 Pains. 15 T. 297. If an attorney whether a man is an attorney? is to be tried by the record of the court in which the attorneys thereof are enrolled. Str. 76. Efter v. Cole. Br. Trail, pl. 78. Ld. Remy 1175.
The question whether an original writ was found 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. 

Hob. 224. 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. 

Gra. Ediz. 131.

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 remanded on a day certain in discharge of his bail? This is to be tried by the record: Because every appearance is by letters patent which always are of record. 


If the action be, whether a deed was interred? This shall be tried by the record. 


But if the question be, at what time a deed was interred? This is to be tried by a jury: because it is not necessary, nor was it formerly the practice, to mention the time of interring a deed in the inrolment. 


If the question be, whether J. S. was sheriff of the county of A? This is to be tried by the record: Because every sheriff is appointed by letters patent which always are of record. 


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. 

Bsa. Trial. pl. 113.

If a sheriff who has returned a certa ipsa, afterwards pleads to an action of escape 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. 

18 Geo. 2. 514.

But if a sheriff who did in fact arrest J. S. returns non injurias, the question, whether J. S. was arrested? is to be tried by a jury: Because it does not in this case appear from the return that he has been arrested. 

2 Rd. Art. 574. pl. 8.

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 peace. 

2 Rd. Art. 574. pl. 9.

If the question be, whether a man has a right to a peerage by creation? This is to be tried by the record of the letters patent creating him a peer. 

9 Rep. 11. Abbot of Strata Mara's cafe. 

Ed. Raym. 14. 12 Mod. 57.

But if the question be, whether a man has a right to a peerage by descent? This is to be tried by a jury: For it can never appear from the record, that the person now claiming the peerage is descended from the person who was first created a peer by letters patent. 


Kex v. Koolby. 12 Mod. 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. 


Every question concerning the proceedings of a court, whether the court of record, is to be tried by a jury. 

I. Art. 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 Pact. 150. See Failure 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 fend it to be tried by a jury. 

Bsa. Trial. pl. 60. 

See Appeal, pl. 47.

If any new offence be created by a statute, and the statute is plain as to the manner of its being tried, the trial thence is to be by a jury: Because this manner of trial is agreeable to Magna charta. 


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. 


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. 


Sid. 313. 5 Rep. 109. Hob. 93.

If the agreement be, that a certain fact shall be proved before a jury, this is to be proved by witnesses to be examined by J. S. 3 Lew. 231. Bayntv. v. Red.

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. 

Gra. Ju. 5. 381. Sid. 313.

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 can never be had within so short a time as two days, this manner of trial could not have been intended. 

Gra. Ju. 5. 381. Sid. 313.

The condition of a bond dated the 23d day of August was, that the defendant should pay to the plaintiff 10s. for every 20s. which the plaintiff should by sufficient proof make it appear that J. S. was indebted to him; and that one half of the same 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 20s. The plaintiff replied that before the said 25th day of November he and J. S. settled an account, by which it appeared that this bond was to be indorsed to the plaintiff in the sum of 310l. upon a demurrer to this replication it was inflected 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. 

Lazo. 665. 

Ladd v. Gared. 

And where it is necessary that a fact should be proved to a jury, it is not necessary that it should be proved in a distinct action. 

A promise was made by J. S. to pay J. N. three pounds upon his proving that a certain cock of his killed a cock belonging to the plaintiff's, and that the cock being brought for the money, J. S. pleaded that no such proof had been made. The plea was held to the bad; Et per cura: 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. 845. 

Griffin's cafe. 

2 Lem. 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 might be brought for the breach of the agreement. It was held not to be necessary; for that such proof may be made within the statute. 


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 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 from the circumstances which attended the fact. 

H. P. C. 329.

If the question be, whether a tenanted house of a manor after the lord who came to dillain had been them upon the manor, with an intent to prevent their
of first notice of trial to be done a second time. 1 Barn. 206. Byngh v. Twyf.

3. Of giving notice of trial; and of countermanding 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. Hinby v. Hedlin. Trin. 8 Gres. 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 in writing, because the issue can only be delivered in town: But that if it be not given with the issue, it may be given in the country. 2 Barn. 239. Tapshor v Hayske. Mich. 16 Gres. 2.

Eight days' notice of trial were herefore sufficient in any case, unless the cause was to be tried in London or Middlesex, and the defendant lived about 40 miles from those cities respectively; in which case it was necessary to give 14 days notice.

But by the 14 Gres. 2. c. 17. par. 4, it is enacted, "That no indictment, information, nor cause whatsoever, shall be tried before any judge of assize or nisi prius, or at any sitting in London or Middlesex, and 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 cured in the book of the clerk of the papers. 2 Litt. Abr. 741.

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 Com-

mon Pleas of Easter 13 Gres. 3. 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 desires to proceed again shall give a term's notice to the other of such proceeding; that such notice shall be given before the eleven 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, altho' it was afterwards countermanded, shall be deemed proceeding within the meaning of this rule."

But altho' 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. 92. Peper's case.

So if the trial of a cause, which has been at issue about four terms, has been delayed part of the time by the party's own act, without the consent of the court, it is not necessary to give a whole term's notice of trial. Ibid.

If a notice of trial has been countermanded, it cannot afterwards be continued: But a new notice must be given. 1 Barn. 210. Smith v. Hefl.

If the name of the cause is not inserted in the notice of trial, the notice of appeals is not to be cured by inserting the name in the continuance of the notice. 1 Barn. 214. Jacob v. Mrsb.

A notice of trial can be continued only once; for the court will not suffer this which amounts to the giving
It is in the general true, that where an action of trover lies, an action of detinue does also lie; but the latter action is very seldom brought, because the defendant therein may wage his law. There is too other reason for preferring the action of trover to one of detinue; which is that in the latter, the plaintiff can only recover the goods in specie, whereas in the former he may recover damages for the conversion thereof. 2 Roll. Rep. 447. Godwin v. Hartwood. Cro. Jac. 150. 1 Roll. Abr. 5.

If the plaintiff in an action of trover has recovered damages to the value of the goods for the conversion of which the action is brought, the property in the goods does infantly vest in the defendant; and it would indeed be highly unreasonable, that he who has recovered damages to the value of his goods should afterwards retain any property in the goods. 4 Abb. v. Braggton.

As it appears from what has been said, that the conversion is the very gift of an action of trover, it will be proper to fliew in the next place, what does in the eye of the law amount to a conversion.

Wherever one man does assume a right to dishope of the goods of another as if they were his own, this is a conversion. 6 Mad. 212. Cl. 310.

And if a man do unlawfully take upon himself to dishope of the goods of another for the benefit of a third person, this is likewise a conversion; for the injury to the owner of the goods is equally the same, as if the goods had dispossessed thereof for his own benefit. 2 Mad. 7.

If I S. take the hat of I N. off his head and carry it away, this is a conversion; for the taking and carrying away of the hat is an affuming by I S. of a right to dishope thereof as if it was his own. 1 Sid. 264. Brown v. Ree. Cl. 112.

But if I S. who came to the possession of the goods of I N. by finding, do accidentally lose them, or they be taken from him, neither of these is a conversion; because I S. does not in either case assume a right to dishope of the goods as if they were his own. 1 Leves 223. Vandile v. Archer. 1 Roll. Abr. 6. L. pl. 4. Bros. Derin. pl. 40.

If any goods are, in order to save a ship in a storm, thrown by the master of the ship into the sea, this is not a conversion: for so far from affuming a right to dishope of these goods as if they were his own, the master only does what is necessary for the preservation of his own life and the lives of the mariners. 2 Duf. 280. Bird v. Ajokes.

If the goods of I S. which have been illegally taken by I N. be re-taken by I S. this is not a conversion; because if I N. was himself in this case the first wrong-doer, I S. does not take his own goods. Bros. Tref. pl. 323. Cro. Elia. 319.

If a flake-holder deliver the money deposited in his hands by A. on the account of a wager, to B. who has won the wager, this is not a conversion; for as B. has won the wager, the flake-holder does no more than he ought to do, that is, deliver to B. his own money. Cro. Elia. 870. Leditham v. Lesham.

The feeling of any thing from a freehold, as the pulling down of the door of a house, is not a conversion; for a conversion can only be of a person's chattels. Cro. Jac. 129. Hudd v. Smith.

But if anything which has been severed from a freehold be carried away; as if I S. carry away a tree the property of I N. which was before cut down either by himself or by any other person, this is a conversion. 120. Skid. v. Hufkin.

If the dig coals in the pit of I N. and throw them out of the pit, this is an affuming; but if the coals do, so soon as they are dug, become a personal chettle, the throwing of them out of the pit is an affuming of a right to dishope of the goods of another. 1 Jon. 249. Player v. Roberta.

Every unlawful intermeddling with the goods of another is an affuming; or an action of a right to dishope of the goods of another, as if they were the goods of the intermeddler. 11. 104. Genera v. Medigre. 8 Y. 1,
If the boles of I. S. be taken and rode by I. N. this is, 'tbo' the horbe be afterwards referred to I. S. a conversion.

1 Roll. Abr. 5. Counts of Radulf's cafe. 6 Mod. 212.

If I. S. who has lawfully directed the boal of I. N. work it, this is a conversion; because it is an alluming of any part of the beall as if it were his own, which is not lawful for I. S. to do. Cro. Jac. 148. Bougth v. Gerard, Breaf. 5.

If I. S. after having lawfully directed the goods of I. N. for rent in arrear, had herefofe fold them, it would have been a conversion; because the sale of such goods was for the making of the statute of 2 W. 3 M. cap. 5, unlawful. Cro. Jac. 232. 1 ed. 194. See Banc. Abr. tit. Trustee.

5 Pec. Aqu. Title, (Pudina. Trust.) See Tllight. It is called try-wealth, from tryos, a city in Champaign, from whence it first came to be used. Cowell, edit. 1727.

The statute of Frauds, (Trune) A league or ceflation of arms; and anciently there were keepers of truces appointed; as King Ed. 3. continued by commissioe of two keepers of the truce between him and the King of Scots, with this clause, No voleta Trigue pratitum quantum ad non profanum forum, &c. Rot. Scot. 12 Ed. 3. See Con- traventions of the Truste. Safe Conduit.

Tractus, A brick or wooden box, set in churches to receive the oblations of pious and well disposed people, of which, in the times of popery there were many at several altars and images, like the boxes, which since the reformation were placed in the churches for, to receive all voluntary contributions for the poor.--Col- lection TeresofloTOITUUTNITUS HILFOS JEffJAMGlTAM TRACUS IN FUGALIS ECELIS ADJEXA PER CONDUCT. Rad. de Dicto fab anno 1666. These custonly free-will offerings which were dropped into these boxes or boxes, made up a good part of the endowment of vicars before an estate in the reformation, and thereby, as in many other respects, made their condition then better, than in later times. Cowell, edit. 1727.

Trust, A right to receive the profits of land, and to dispose of the land in equity; per Pendleton, arg. Med. 17. in the case of Smith v. Whealer. And holding the possession and dividing thereof at his will and pleasure, are signs of trust. Chan. Rep. 52. A trust is but a new name given to an usufr, and invented to debar the statute of Uses. Arg. Sit. 40. See Uses.

Trusts and legal eftates are to be governed by the fame rules; and this is a maxim which has universally pre- vail'd, and is so in the rules of defending the Eftates of the King of Rome, and of the counties, and of the ecclesiastical and South England lands; there is an eftate strait of a trust, as well as of a legal eftate. The like rules in limitations, and also of barring entirely of trusts, as of legal estates; per the Matter of the Rolls, who said he thought there was no exception out of this general rule, nor is there any reason that there should; 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. Wms. Rep. 645. Sutton v. Sutton.

For a person being held in fee of certain lands devis'd them to trustees in fee, in trust to pay his debts, and to convey the surplus to his daughters equally; the younger married and died leaving an infant son, and her husband surviving; the eldest daughter brought a bill for a partition; and the only question was, whether the husband of the younger daughter was the tenant in chief to his son, by the conveyance to him, as tenant by the curtesy? Upon which it was decreed by Lord Chancellor, that trust eftates were to be governed by the fame rules, and were within the fame reason, as legal eftates; and as the husband should have been tenant by the curtesy, had it been a legal eftate, to shew he be of age, and the trust eftate; for no eftate of property in all courts, all things would be, as it were, at sea, and under the greatest uncertainty. 2 P. Wms. 128. Whitt v. Baie.

1. What amounts to a declaration of trust, and when a trust shall be voided.

2. What shall be deemed a resufiting trust, or trust by implication.

3. What amounts to a declaration of trust, and when a trust shall be voided.

The statute of 29 Car. 2. cap. 3. sect. 7. enacteth, 'That all declarations or creations of trusts shall be ma- nifested by some words signed by the party, or by his left will in writing, or else he shall be void.' But by sect. 9. of the same act, 'Allignments of trusts shall be in writing, signed by the party assigning the same, or by his left will, or else he shall be of no effect.'

But words which are not altogether artificial, will serve to direct a trust, which will not serve to limit an eftate; nor to keep. Fin. Rep. 159. Surfe & al v. Vansworth.

Where A. devis'd all his lands to B. and the heirs of his body; and in another part of his will, reciting that he owed B. money upon account, he therefore devis'd to him all his personal eftate, and made him executor, willing him to pay his debts; and upon the reading of the will, though the clause as to the payment of debts seemed to relate to the personal eftate only; and though the lands were devis'd to B. in tail, with a remainder over to another; and that it was objected, that a tenant in tail could not be a trustee, yet the court decreed both real and personal estate to 110d. for payment of the settlor's debts; and the decreed, it is said, was affirmed in the house of Lords. 1 Vern. 41. Case of v. Pelham.

So if J. S. devises his lands to his brother, who is his heir at law in fee, and likewise devises several legacies, and makes his brother executor, directing him to fee his will performed according to the trust and confidence he had reposed in him; this makes the real eftate liable; for the settlor needed not have devis'd the eftate to his brother, being heir at law, unless he intended that he should take them chargeable with the debts and legacies. Decreed and affirmed by the house of Lords. 2 Vern. 125. v. Sparks.

A trust was decreed of a term for years assigned, tho' the trust was not expressed in the deed; yet it having been so declared by the affiance, who had given bond to perform the trust, the same was decreed accordingly. Fin. R. 256. Goyth v. Small.

In a devise of 1556. to A. and B. for such uses as the teftator had declar'd them, and by them not to be dis- clared, and he directs the trusts to A. who by letter dis- clares it to B. this shall be a trust, and the letter is a good declaration thereof. 2 Vern. 126. Crake v. Brooking.

But if a man devises 40l. to be paid to his cousin J. S. and by him to be disposed of in such manner as the teftator should by a private note acquaint him with, and he dies without having made any such appointment; this shall be a good bequest to J. S. and shall not go to the executors, from whom it was intended to have been given away. 1 Chan. Cis. 126. Martin v. Dods. And in the notes to the above case, mention was made that it should be disposed of as A. should direct; on a bill exhibited for it, the court declared it was a depositum or trust, and decreed payment of it, though it was barred by the statute of limitations. 2 Vern. 345. Ed. Hill's case.

A. in consideration of execution, conveys an eftate abso- lutely to B. and afterwards A. brings a bill to redeem, and B. by his answer insists that the conveyance was abso- lutely, but confesses it was in trust, that after the 80l. paid with interest, he was to hand feid for the benefit of the wife and children of A. though no trust was declared in writing, and A. refused to the answer: And it was im- fisted that A. having replied, and the defendant made no proof of the trust, no regard ought to be had to the matter set forth in avoidance of the plaintiff's demand: yet the court decreed the trust for the benefit of the wife and children. 2 Vern. 288. Hampton v. Spencer.
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So if J. S. makes his will, and his wife executrix, and the son afterwards prevails on his mother (by telling her that the executrixhip would be troublesome to her, &c.) to get J. S. to make a new will, and him executor therein, he promising to be a trustee for the mother, which is done accordingly, and in that will there is but a small legacy given to her; this was voided a trust for the purpose of the point of trust, notwithstanding the statute of frauds and perjuries, which requires a declaration of trust in writing. 1 Vern. 296. Thynn v. Thynn.

But where one poiffied of leases for years devised them to his wife, the land thereunto appertaining to the use of his son, and died; and his second husband granted the leases away: And the son fued to be relieved, his bill was disflimed; for it was no trust for the son. Cited by Lord Chancellor as a case where he remembered in Lord Egerton's time. Chan. Cufp. 310. Cidv. v. Ribh.

With respect to raising to trusts, it has been held that where a trust 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 Geo. v. 3.

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 to have this legacy paid out of the real estate. For the plaintiff it was infufed, that this was different from the common case of a legacy payable out of the lands, for here the time of payment was postponed out of regard to the circumstances of the fund, and not of the person. But by Lord Chancellor: The general rule is, that where a legacy or portion is given to be paid out of lands, payable at a certain time; if the legatee or child dies before that time comes, and before the time, when in the view of the testator he could be suppofted to want the legacy or portion, it shall fink 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 ufe of from the circumstances of the fund, that is only brought as an auxiliary reason; and no cafe has been determined upon such circumstances alone. If it had been given on a contingency on the failure of fulne of A. &c. there might have been some reafon to have given it to the representative, as the testator might probably think the legatee could not be living at fuch a dilaffent period. But here it depends on the death of his wife, which might happen in a reafonable time. In cafes where it has been given to A. his executors and administrators, it fhews the intention of the testator to make it transmittible; and where it has been charged by a condition, or a conditional limitation, and the legatee has had a remedy at law to defect the devise of the estate to the devifees, this court will not interpose to take that remedy from him. If the estate in the case of A. &c. had been voided by the common law, the devifees might have the benefit of the real estate. But in the cafe 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 what was rull'd in 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 fhare to go to the survivour; this looks as if he did not intend that the representative should have it even in the firft befit, and is another further circuimstance to confirm the opinion given agains raigning the legacy out of the real estate. Bill disflimed, but with costs. Here the testator had given the child who had married, and left children, it might have been otherwife.

Fry v. Fry in Chan. Trin. 27 Geo. v. 3. MSS. Rep.

2. What shall be deemed a refulating trust, or a trust in implication.

It has been fawn under the left head, that by the ficture against frauds and perjuries, the 29 Car. 2. cap. 3. all declarations of trusts were to be made in writing; but in the cafe of A. it is a faving with regard to trusts refulating by implication of law, which are left on the footing whereon they flood before the act; now a bare declaration by parol before the act, would prevent any refulting trust. Arg. And the court feemed to be of this opinion. 2 Vern. 294. pl. 295. Lady Beloffs v. Cray, an action for a legacy.

It was likewise ruled by Lord Chancellor Cooper, that the statute of frauds, sect. 8, which says, 'That all conveyances, where trusts and confidences fhall arife or refult by implication of law, fhall be as if that act had never been made, must relate to trusts and equitables interests, and cannot relate to any ufe which a legal Lord Mich. 1709, in the cafe of Lampbe v. Lampbe, 1 P. Wm. 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, that there be no deed made, declares the trust thereon; for the statute of frauds and perjuries extends not to trusts raised by operations of law. 2 Inst. 326. Ann. 1 Vern. 306. S. P. Gofperitz v. Thyniggs.

No rule is more certain than that if a man makes a conveyance in trust for fuch person, and fuch fatisfaétions as he fhould demand, and makes no appointment, the refulting trust mufl belong to him. 3 Vern. 296. Thynn v. Thynn. But trusts arising by operation of law have been but of two kinds, (frit) either where the conveyance has been taken in the name of one man, and the purchase money paid by another; or (fcon) where the owner of an estate has made a voluntary conveyance of it, and made a declaration thereon with regard to one part of the estate, and has been flicet with regard to the other part of it. Per Lord Chancellor, Bernard, Rep. in Chan. 388. Lloyd v. Spillit.

Where it plainly appeared upon the evidence of both fides, that the consideration money paid on a purchase was the conveyance of fuch A. (though mentioned in the conveyance to be paid by B.) in fee, fupposing it had not been for the statute of frauds, this would have been a refulting 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. Wm. 325. Andrews v. Andrews.

Wherever there is a confideration there can be no refulting trust. But if a f cade be made for years without a confideration, there will be a refulting trust to the lefle.

Where a daughter's portion was charged upon the father's land,fee at the request of her father, had releafed her interest in the land, to the intent that he might be enabled to make a clear settlement thereof upon the fon. It was declared by the Lord Keeper, that if this was done by the daughter without any confideration, there would be a refulting trust in the father, whereby he should be chargable to the daughter for so much money. Freem. 305. Lady Torref's case.

But where a truftr does not have 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 misapplication, these lands may be fetofered, yet they cannot be setl'd out to B., because it is not a refulting trust, for no more than if A. borrows money of B., and it is not a trust in writing; and a refulting trust it cannot be, because that would be to contravene the deed by parol proof, directly against the statute of frauds. But if this proof has been reftablished to have been made with the profits of the trust estate, this appearing in writing might ground a refulting trust. On appeal to the House of
of Lords, this decree was affirmed. 

U.S. v. H. R. A.

So where a defendant impregnated the executor to lay out the personal estate in land, and filed it on A. and his heirs: And the executor being about to purchase told A.'s mother of it, and offered her content, but took the conveyance in his own name, and to that purpose a bill of sale, but it was reserved that he at several times declared it must be made to fill satisfaction; yet the court (though inclined to decree a conveyance to A. the executor being dead indefinitly) declared it could not, because there was no express proof of the application of the said money. Co. Proc. 1821. pl. 130. Holow 21.

The statutes of this state, 21 Vin. Abr. tit. Trust, and 5 Bac. Abr. tit. Uses and Trusts.

Estates of pupill, are disposed to make presentations to churches, by Stat. 12 Ann. 10.

Tunbridge, (Tunbrilium, Turbicetiun,) 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. Kicgin, fol. 13. See Carrying-Tool.

Eitt, or Eto, In the end of words, or names of places, signify a town, village, or dwelling-place. Cowell, edit. 1727.

Eitt, (Tunbrilium, a measure of oil or wine, containing 40 bushles of oil, and 111 tons and 222 gallons, or four hogsheads. Stat. 1 R. 3. c. 12. 2 H. 6. cap. 11. and 12 Car. 3. c. 14. A tun of timber is 40 good feet; a load 50. Cowell, edit. 1727.

Tunbridge, (Sax. Tongeretona, i. e. villis praepatris,) A rece or bailliff, qui in villis (que decimus mononoti) demands profeces of juifites, iuifque vice annis defipient & mediteram. Selman.

Tunnage or Tonnage, (Tonnagium and Tonnagium,) is a custom or impost due for merchandise brought or carried in tun, and such like vessels, from or to other nations, after a certain rate for every tun, mentioned in Stat. 12 H. 4. c. 3. 6 Eliz. c. 10. Ed. 6. c. 17. 1 Tran. 33 Eng. and 12 Car. 3. c. 4. It is sometimes used for a duty due to the mariners for unloading their ships arrived in any havens, after the rate of so much a tun. Tonnage and pounding began in the 45th of Edward the third. Cattone Pothenia, fol. 172. See 4 Infly. fol. 32.


Turbar, (Turbia, from turbare, an obsolete Latin word for a turf,) Is a right to dig turfs on another man's ground. Kicgin, fol. 94. And common of turbary is a liberty which some tenants have by prescription to dig turfs on the common. Turbarie is also taken sometimes for the ground where turfs are digged. And you shall find an office brought of common of turbary in 5 Afl. pl. 9. and 7 E. 3. fol. 43. They likewise used turbary for the turf, and turbartius for the turbary. Cowell, edit. 1727.

Turfers, may be imported as they might have been before 10 & 11 Will. 3. 1 Geo. 1. fol. 2. c. 18.

Turkey company, Any subject may be admitted on payment of 20 l. 26 Geo. 2. c. 18.

Exportation of gold and silver subject to by-laws, 26 Geo. 3. c. 18. f. 8. Their by-laws subject to be revoked by the board of trade, 26 Geo. 2. c. 18. f. 5.

No woollen goods of France to be imported into the levant fees, 32 Geo. 2. c. 34. Nor British except from Britain, 32 Geo. 2. c. 34. f. 2. See French goods.

Turkins, Is a fort or eky brake cloud. 'Tis mentioned in the Stat. 12 H. 8. c. 14. Turin or Tauria, Is the sheriff's court kept twice every year, viz. within a month after Easter, and within a month after Michaelmas. Magna Charta, cap. 35, and 3 E. 3. c. 15. From this court are exempted only archbishops, bishops, abbots, priors, earls, barons, all religious men and women, and all such as have hundreds of their own to be kept. Stat. 25 H. 3. cap. 10. Britton cap. 29. calls it tauria, id est, ambitus, circuitum: It is a court of record in all things that pertain to it. It is the King's feet through all the country, and the sheriff is judge, and this court is incident to his office. See Cram, jur. fol. 230, and 4 Inst. fol. 260. See Pictis, leg. 2. cap. 52, and Mirror of just. lib. 1. cap. de turinis.

It is called the forriff's turc because he kept a turn or circuit about his charge, holding the same in several places. Sir J. Dallittle's left of Wales, fol. 50.

Turks, or Turf in this 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 court, Stat. Mort. 52 H. 3. c. 10. Articles to be imposed of in the court, Stat. Wall. 12 Ed. 4. in appendix.

The sheriff shall make them interreg by 12 men, who shall fix their fees, 13 Ed. 1. c. 13.

The sheriffs shall deliver over to the justices the indictions taken in the court, and shall not make out processes upon them, 1 Ed. 4. c. 2.

Jurors in the turn shall have 201, a year, freehold, or 1, l. 6. 8. c. 3, 1 K. 4. c. 4. See County court.

Turkeys, Fealties on feeling turmpy, 23 Geo. 2. c. 26. f. 13.

Turco biddomam is a writ that lies for those that are called to the sheriffs turn out of their own hundred. Reg. of writs, fol. 173.

Turner making or cutting them down, punished as a trespas, 1 Geo. 2. fl. 2. c. 19. f. 1.

Charges of prosecution to be defrayed out of the tols, 5 Geo. 2. c. 33. f. 3.

Turnpike illegally erected, to be removed by order of quarter-clerks, 5 Geo. 2. c. 33. f. 4. See Highways.


Turrense. See Drugs, Fire.

Turris, See Schools.

Tutte, Signifies a wood grubbed up, and turned to arable. Co. on Lin. fol. 4.

Twaighes gelle, (Hoffa duarum notiam,) If he did any harm to any, his belt was not answerable for it, but himself. Hoveden, part. pater. farr. annal. fol. 345. See Third-night dwne-hinde.

Twelvethnus, The name was with Thomas. 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 sum 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 bindone: Those who were worth 1200l. were called twelfe-hinde; and if an injury was done to him, satisfaction was to be made according to his worth. Cowell, edit. 1727.

Twelve men (Duodecim homines legiscales,) is a number of twelve persons, or upwards, to the number of twenty-four, by whose oath as to matter of fact all trials pass, both in civil and criminal causes, through all courts of the Common Law in this realm. First, in civil causes, when proof is made of the matter in quittance, then the point (that they are to give their verdict upon) is delivered likewise unto them, which we call the fives; then they are put in mind of their oath to do right, and are by the judges, who turn up the evidence, lent out of the court by themselves, to confider upon the evidence on both sides. The judge, who agrees, which done, they return to the court, and deliver their verdict by the mouth of their foreman; according to which, (if the matter be not arrested or stayed by the court) the judgment paffeth, Cowells, edit. 1727. See Jury.

Twelfehead, Twelfth-head, twelvhead, twelvankind. Under our Saxon government all persons had such an effimated 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 cideri or husbandmen, who were valued at 200 shillings, and called twelvendemen. The middle, that of the farmers or husbandmen who were valued at 500 shillings, and thence called fivshendemen. The highest, that of the thanes or noblemen, who were rated at 1200 shillings and called twelfethdemen. 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.
V A D

Sylbulsan, Accultation, impeachment, or charge of any trespass or offence. Leg. Edicted, c. 2. There is a Mistake in the laws of King Canute, as published by Bronzam, cap. 36. Si quis animis deftitutus vel aliginenta dii status laborum servavit, si plagiam non habet, in prima thalma, (it ought to be tybliba) of qt, answer pro nuntius, in carcavam, & ilid flectaxit done ad di judicium eat. Cestull, edit. 1727.

Sylbith, is a British word signifying, familia, familium, tribus, and is derived either from yib, i. e. hevi iliatlatis dem, est, locat addictione demus aperture, or elfe from slyth, which signifies true, tri. In the first derivation it signifies a place whereon to build a house, and in the second a beam in the building. And slyth is a tribe or family, branching or shifting out of another, which we in our English heraldy call friend or third branch. So that in case the great paternal flock branched it self into several slythos or houses, they carry no fo-

cend or younger house his slythos farther, and the use of these slythos was to shew not only the originals of families, as if their work had been merely to run over a pedigree, 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 Cevulind. Cestull, edit. 1727.

Epus. See Eitches.

V A L

Vacatiuia, A void place, or waffle ground. Memorand. in Stace. Mich. 9 Ed. 1. by Sir John Maynard.

Vacation, (vacatiiu) is all the time betwixt the end of the one term, and the beginning of another. Where such times began and ended in our ancestor's days, see Roger Huidon's annals, part. paget. fol. 243. where you shall find that this intermission was called pax dii et ecclesiae. Alfo the time from the death of a bishop, or other spiritual person, till the bishoprick or other dignity, be supplied with another, is called vacation. Welton, c. 21. cap. 11 and 14 E. 3. cap. 4. 5. Fruits of benefices taken in the time of vacation, shall be restored to the next incumbent, 26 Hen. 8. c. 11. See Piantrary, misc.

Vacat. See Judgment, and 21 Tn. Abr. 536.

Vacature, A voidance, or vacancy of any ecclesiastical benefice that shall hereafter happen. As prima vaca-
tura, the first voidance, priorium vacaturar, &c.

Vacary, or Vatchry, (vacarria, al. vacaria, vacaria, and vacharia) is a house or place to keep cows in, Pleto, lib. 2. cap. 41. Domine fac deo vaca alnum, utq negotium gaudem ad etiam anstua perficatur. Schelm. A dairy-house or cow-paflu. Without warrant, he shall be a vacary within the forest. Cresp. jur. fol. 194. But in the Stat. 37 H. 8. cap. 16. Vacarry seems to be a special name of a certain compass of ground within the forest of Aldstoun. And we read of the vac-
cary of Wysrafle in Com. Lac. Rot. Fin. 35 Edw. 3. m. 23. Cestull, edit. 1777.

Vacarius, The cow-herd, or herds man, who looks after the common herd of cows. See his office described in Pest, lib. 2. cap. 2.

Vadem diuinqu. To wage a combat; which was when a person challenged any other to decide a contro-

vcrity by camp fight or duel, and threw down a gauntlet, or the like form of defiance, which if the other took up, this was vacarius diuinquum, as it were to give and take a mutual pledge of fighting. Cestull, edit. 1727.

Vol. II. No. 132.

Ved librarian, Literally a mortgage, lands of immovables 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 Glanville, lit. 10. cap. 8.

Ver jubium, To take security, had, or pledge for the appearance of a delinquency in some cause of justice. Poruch, antq. p. 334.

Vlagabonu, (Vagabundus) One that wanders about, and has no certain dwelling; an idle fellow. Vagios, vagabonds, and Ruddy beggars, mentioned in divers statutes. Cestull, edit. 1727. See Vagants.

Vagants, Given power to a person able to work prohibited, 23 Ed. 3. ft. 1. c. 7. 11 H. 7. c. 2.

To be imprisoned by the sheriff, 23 Ed. 3. ft. 7.

Vejtices of peace, 34. to bind vagnets to their good behaviour, 23 Ed. 3. ft. 7.

Vageters, able to work shall be set in the rocks, 12 H. 2. c. 7.

Prisoners arrived from beyond sea shall have pabilities from the magistrates, 12 R. 2. c. 8.

Punishment of vagants and those that relieve them, 19 H. 7. c. 12. 22 H. 8. c. 12. 27 Ed. 6. c. 25. 1 Ed. 6. c. 3. 3 Ed. 6. Ed. 6. c. 16. 5 Ed. 6. c. 2. 27 H. 3. Ed. 6. c. 14. Ed. c. 14. 18 Ed. 3. 11 Jc. 1. 6. Jc. 4. 3. 2. 7. See c. 1. c. 4.

The punishment by lodging, boring through the ear, &c. repealed, 35 Ed. 7. c. 7. 24. Wanderingolders or mariners shall bete to labour, and shall have a testimonial of a justice of peace, 39 Ed. c. 2. 2. 7. 12. Edc. 3. 5. c. 2.

General privy search to be made for vagants, 34. 12 & 14 Car. 2. c. 12. f. 16. 12 Ann. f. 2. c. 23.

The justices may transport vagants and vagnets, 22 & 14 Geo. 1. c. 12.

Contable may make rates for re-imburding the charge of conveying vagants, 13 & 14 Car. 2. c. 2.

Vagants paid by contables to be brought before a justice, 11 & 12 H. 3. c. 18.

Justices to set down the rates for conveying vagants, 11 Ann. f. 2. c. 13. f. 6.

Vagants to be put into the Queen's sea service, 2 & 3 Ann. c. 6. f. 16.

Justices to make rates for conveying vagants, 5 Ann. c. 32.

General directions concerning vagants, 12 Ann. f. 2. c. 23. 13 Geo. 2. c. 24. 17 Geo. 2. c. 5.

Breaking out of house of correction felony, 17 Geo. 2. c. 6. f. 5. f. 25.

Directions concerning women delivered in the fleet, 17 Geo. 2. c. 5. f. 25.

Vagants whose settlements cannot be found, may be sent to the plantations, 17 Ann. f. 2. c. 5. f. 28.

End-gatherers to be deemed rogues and vagants, 17 Geo. 1. c. 23. f. 8.

Plantations within five miles of the universitie, deemed vagabonds, 10 Geo. 2. c. 19. f. 1. or acting without licence, 10 Geo. 2. c. 28.

The justices may examine a vagant upon oath, and for want of bail commit him till the assizes, 25 Geo. 2. c. 30. f. 12.

Method of conveying vagants, 26 Geo. 2. c. 34.

Vall, Vallis, or Villis, Anderson, many of the times, 34. 26 Geo. 2. c. 34.

Vallis, Valler, or Valfet. In general, many of the times, 34. 26 Geo. 2. c. 34.
V A S

V E N

Veneri Templo it is used for a beeche's chalke, or servent; the butlers of the house corruptly call them varlets. In Reg. of writs, 25 5, valletus. If the servent to a vallent of the croston, C. Coke on Latticel, fol. 136. Cowell, ed. 1777.


See Valut

Vallutaria, The kindred of the fain, one on the father's side, and another on the mother's side, to prove that he was a Willanion: It is mentioned in Statut. Habilis, and 12 Eliz, cap. 3.

Value, (Valentia, valut.) A known wood, yet Hyl in his symbol, part. 2. tit. Indictments, fol. 76. nicely distinguished between value and price: His words are these: The value of those things in which offences are committed, is usually comprised in indictments, which seems necessary in this case. But it appears to me that the said indictments contain a great deal of both, that is to say; but in such a manner as to aggravate the fault, and increase the fine: but no price of things free nature, may be expressed, as of deer, hares, &c. as it be they be not in parks and warrens, which is a liberty. Stat. 8 Ed. 4. f. 105. of charters of land. And where the number of the thing taken and what of the same, is by the inference, of their kind, as of young doves in a dove-house, young hawks in a wood, these shall be said (pretii or valuentium) but of divers dead things ad valuentes, and not pretii, of coin not current it shall be pretii; but of coin current it shall not be either pretii or ad valuentium, for the value and price thereof is certain. Cowell, ed. 1777. cap. 31. fol. 571.

Value of marriage, (Valor matrimonii.) Was a writ that lay for the lord, having prevailed covenable marriage, to the infant, without disparagement, it is refused to take the lord's offer, to recover the value of the marriage. Reg. Orig. fol. 164. Old Nat. brev. fol. 90. See Pal. Libr. c. 1. lib. 5. fol. 126. and the statute 12 Car. 2. cap. 24.

Venantia, (Procasor) As venantia Regis, the King's foot-man: Richardus Roctyli miles tenebat terras Spectivas per servitium venantia Regis in Gaffesco, dicitur parvis suis partem taliavarium pretii 4d. i. dom triumphis per calleitarum pretii 4d. Rex. de finibus, Term. Mich. 2 Ed. 2.

Variation, (Variance, from the French Varier, 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, &c. 2 Litt. Abst. 657. 350. There is a variance between the writ and declaration, in an action of the kind, the one being for more than the other, and the declaration, in a variance, that in the writ and declaration, an action of that case, the one being for more than the other, and the plaintiff had a verdict, he could not get judgment: It was held, that it was not helped by the statute 18 Eliz. for that statute helps when there is no writ, not where there is one that varies in falsehood from the declaration. 2 Cris. 281. In a variance, when the original writ was called 24 Jam. and the ejectment supposed to be 31 Jam. in the same year; the plaintiff had a verdict, and this was affined for error, viz. that the original was taken out before there was any cause of action, and being certified to be between the same parties, and of the same land, in the former writ, it was adjudged false, and not to warrant the declaration; and thereupon the judgment was reversed, Cowell, 539. See 21 Hen. 3. tit. varianc.

Valutta, (Vallutalia) Signifies him that holds land in fee of his lord: we call him more usually a tenant in fee, whereas some hold only services, and are called

Vaffelfja inar: Stæne de velteur, signif. verb. Liggauia, fath that vaffelfja is divided into hamborgian & nem bampagn. Homletus is he that freeworth service with exception of a higher lord, and nem bampagn is he that freeworth without exception, all one with ligon. And the Cob/ter, i.e. the Cogelles, faith, that it is good vaffel festallus, i. inferior fish, because the vaffel 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, ed. 1777.

Valluage, Signifies the fite of a vaffal, or servitude and dependence on a superior lord: Liige vaffelage beligned only to the King. Jellis.

Vallo, is a writ that lies for the heir against the tenant for term of life or of years, for making walle; or for him in the revocation or remainder. F. N. B. fol. 55. 32. Stat. 8 Ed. 3. fol. 67. 26. Vaffelage, A waffe or common lying open to the cattle of all tenants who have a right of commenting. Paroch. Antiq. 171.

Vallonat, et Valfoci, That part of forest or wood, wherein the trees and underwood were destroyed, that is lay in a manner waffe and barren. Paroch. Antiq. p. 351.


Vallonation, (Vallonation.) The lands that a vassal held. Brath. lib. 2. c. 39.

Valter-Heyne, The tenants of one of the tithings within the manor of Bradford in Willeshe, pay a yearly rent by this name to their lord, the marquess of Winchester, which is in lieu of wals paid formerly in kind. Cowell, ed. 1777.

Vexillum Judicilium, 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 Salt. 32.

Apures, (Vidories, from the French veir, videre, inuerti.) 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. brev. fol. 112. So likewise Brathen, lib. 5. fol. 97. cap. 8. It signifies also such as are sent to view those thaf effloge themselves de modo leti. whether they be in truth so fack as they canco: appear, or whether they counterfeit. Brath. lib. 5. tract. 2. cap. 10 & 14. Lastly, it is used for those that are appointed to view an offence, as a man murdered, or a vineyard ploughed. Cowell, Antiq. ed. 1777. See Vitiu.

Vexilnarias, (Ministerium de Vexillationis,) The lands of dog-leader or a courier. Rit. Pip. 5 Stepb.

Vexillationis, One who leads grey-hounds, which dogs in Germany are called Wilers, in Italy Felter's, in France Vaffelles, Vaultras. And lands are held per servitium insignium, per servitium concis ducere, & c. Bovinum Utortis, pag. 9.


Vexillation, Are those becats which are caught in the woods by hunting. Lag. Camb. cap. 108.

Vexolation was sometimes used for the exercice of hunting, but more often for the prey taken, or venison. If any hunts without licence within the liberties of the King's forest, a severe penalty was imposed at the next tenannone; which fines and amercements were sometimes so great, but conventionally referred to the King. So when William Fitz-Nigel enjoyed several privileges as forester of Berrianil, it was—Excepti Giovanni de Nikonis & venatione, que Domino Regi conuiu referatvobis. Parch. Antiq. p. 73.

Vexillum eques, Is a writ judicial, directed to the under sheriff, commanding him to sell goods which
he hath formerly by commandment taken into his land,
for the satisfying a judgment given in his court.

Judging Regis, The King's teller or deane man,
the person who exposed to sale those goods and chattels
which were seized in a field, and directed to answer any debit due
to the King, Philipps. de parte 1, t. 158, p. 401.

Item, the words againo, profited, being
found in a deed of sale by Abiel Dominix usuos venire,
Ebor. de varios usus
bargain that venire deputacionis aliis Regis, vel etiam
pro Aeuro Regies, nisi existente, good ius vel certus
attestatum vis ad mandatum vicinorum de lao in loco
in etiam comm. fungitio facias ad vita et vicinorum facendas
in etiam capitio de nonagena venire pro facias in saeclis
was afterwards felled into the King's hands for the abate thereof,
as appears by the great role in the pipe-office,
don in fol. 41.

Leon and Leland. Tender is a person who sells
any thing, and vende the person to whom it is sold.
Where a man sells a thing to another, it is implied that
the vendor shall make allowance by bill of sale to the ven-
de, but not unless it be demanded; Per Finch Chancel-
lor. 2 Ch. caus. 5. Mich. 32 Car. 2. Legate v. Hockwood.

A verbal sale was made of a third part of a ship to B,
Gives bond for the money, and the ship is delivered
into his possession; B, demands a bill of sale of the
vendor, without which he cannot make a satisfactory title
to any other person. Vendor refuses, B, lands the ship a
voyage, and the vendor returns to the court to demand
the same; Vendor then offers a bill of sale. B, refuses.
Decreed the bond to be delivered up, and the third part, &c., re-
affigned to the defendant. 2 Ch. caus. 5. Mich. 32.
Car. 2. Legate v. Hockwood. See Bill of Sale, and
21 Ind. Am. tit. Tender and Vende.

Vencellia, is a narrow or deep prison way: It is mentioned
in the Monda. 1 tem. pag. 438.

Venida, Is a kneeling or low prostration on the ground
used by petitioners. Waltingham, pag. 146.

Venire fictum, A writ judicial awarded to the sheriff
to cause a jury of the neighbourhood to appear, when a
case is brought to issue, to try the same; and if the
jury come not at the day of this writ, then there shall go
a habess corpora, and after a difters until they appear.
Old Nat, Br. 157. But where a venire omits part of the
issue to be tried, or any of the parties: if a juror is named
in the habess corpora, by a name different from that in the
verdict; or a juror returned on such a panel is omit-
ted in the habess corpora; or a venire or difftere are il-
faced without any award on the roll to warrant them;
it will be ill, and is said to be a discontineuance. 2 Hacket P. C. 398, 399. A venire fictum ought to be de omne aliquid vicin-
tus; and venire de vicinatu civilitas, is good without nam-
ing any party or any one of the jurors, and the jurors are
summoned. 2 St. 633, 636. Though it hath been
held, that the venire fictum may be of a town, parish,
manor, or any place known, called a lieu connu; but not
of a city or county. Cron. Eliz. 265. And yet where a
venire cannot come from a vill, hamlet, &c., there it must
be de corpore commissum, to prevent failure of justice, be-
fore the 4 & 5 Ann. by which act all a venire fictum
may be from the body of the county, &c. In an inform-
ation against a county for not repairing a bridge, it
was held, that the attorney general might take a venire to
any adjacent county; and that it might be de corpore of the
whole, or de vicinato of some particular place there next adjoining. Triu. 3 Ann. 33. Salt. 381. The
plaintiff in avenirissett declared upon a pr. maje at
Middlesex in Kent; and upon non avenirissett pleaded, the
venire fictus was de vicinato ville & parochia de Middle-
sex, and a trial was had: But it was resolved to be an
in-
faction, because the court ought to have been a damage
preripted than the plaintiff himself had alleged in his de-
decration. Triu. 104. See 316.

Venire fictus, Is also the common procce upon any
pretenement, being in nature of a summons for the party
to appear; and this is a proper process to be first awarded
on behalf of the plaintiff, who, by order of the court,
may take an action, or trespass, or felony, or nuisance, except in such cases where
in other process is directed by statute: And if it appears
by the return to such venire, that the party has lands in the
dcounty whereby he may be distracted, the duties in-
finite shall be awarded till he do appear; and he shall
forever be in default, so much as the sheriff returns
upon him in illes: But if a void be returned, a copy,
affidavit, and certificate, or certificatum Venire fictum,
by magis. 2 Hacket. 283. The venire fictus ad respendendum may be without a day cer-
tain, because by an appearance the fault in this process is
cured; but a venire fictus ad triandum, extimus must be re-
turnable on a day certain, &c. 3 Salk. 371.

Venire infra, Is the book of necrology to be called be-
cause of the custom of calling it by the name of the
Decem, &c., in the hymn-book or Psalter as it is appointed to
be sung, &c. It often occurs in the history of our Eng-
lish synods; and is called veritamentium. Acton. Aug. tom. 3,
pg. 537.

Venire infrinceptum, Is a writ for the search of a man-
that hath flew u with child, and thereby with-hold-
eth land from him that is next heir at law. Reg. Orig. fol.
237.

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
the wife, and in justice to his father, was at the first instance
to bir the remainder in use, limited to the first son of Sir F. and
so disinherit the issue en venire so mere. The widow of
Sir F. petitioned the judges and the lords in council, to thay
his proceedings, suggesting that she was with child; which
was granted. Whereupon P. gorgelled in Chancery, that
she was not with child, but that such pretense detained the
evidences of the lands, and stopped his recovering a
profit, and prayed the writ de venire infra, which was
granted. Whereupon the sheriff of London, with a
jury of women, whereof two were midwives, came to
the lady's house, and into her chamber, and sent to her the
women, sworn by the sheriff before, to fetch, try, and
speak the truth whether she was with child or not.
The men all went out, and the women searched the lad-
y, and gave their verdict that she was with child;
whereupon the sheriff returned the writ accordingly.
Mon. 533. pl. 693. 39 Eliz. Dame Willoughby's cafe.

A widow married again within a week after the death of
her first husband, whose cousin and heir brought the
writ de venire infra, directed to the sheriff of Len-
don; who returned, that he cauported to be searched by
such mistresses, who found her with child, and good par-
- tures of it, which she could not, and again and again,
the weeks, and the mistresses said, that she might take her into custody, and keep her till she
was delivered. But because the ought to live with her
husband, the court would not take her from him, he enter-
ing into a recognition, that the should not remove from
his then dwelling-house, and that one or two of the
women returned by the sheriff should keep her every
day, and that two or three of them be present at the
delivery; and a writ was awarded accordingly to the
sheriff of Sarrey. And afterwards she was delivered of a
daughter, who was found by inquisition to be the daughter
and heir of the first husband. Mon. f. 685. pl. 2. Poph.
22 Jac. B. R. Thatcher's cafe. See 21 Ind. Ant. 547.

Venire, (Vicinetum, or Vicinetum.) Is taken for a ne-
ighbouring place, locus vicinum vicini habitans: It is the
place from whence a jury are to come for trial of causes. F.
N. B. 115.

The two general rules respecting the necessity of a ven-
ire are, that a venire is necessary in all cases where the
matter is transferable, or where it affects the right of the
action; but where it merely regards the person, or con-
cerns damages only, there a venire is not necessary. 5
Bow. Ant. 325.

In Venetia, where on the cafe the defendant pleaded in ab-
atement, that the plaintiff was an alien enemy, and laid no
venire:
V E N  E R

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 cause, and the plaintiff should reply, not that he was born in such a place in England, and in the principal case judgment was given, quod bills extractor. 2 Ed. Raym. 1243.

Fir v. Cooper.

Matters touching the person, as privilege of attorney, may be pleaded without a venue, and be tried where it is brought. 2 Ed. Raym. 1172, 1173. Section v. Garrett.

In covenant against one as assignee, there is no need of laying any venue, because an assignment is always intended to be made on the lands assigned: per Cor. Carth. 235. Buckie v. Wallace. 2 Ed. Raym. 1019.

Section v. Garrett.

The declaration exequatur is transferable, and therefore a venue must be laid. Cro. Elia. 360. The Lady Shandy v. Simpson.

Where the judgment is upon a nihil dictit, the want of a venue is not material to lie at issue; because the enquiry is not to be of any thing besides damages, which may be enquired by any jurors in the county. 1 Latt. 215. Remington v. Talor.

It is a general principle, that the want of a venue is only curable by such plea as admits the fact for the trial whereof it was necessary to lay a venue: Or by a verdict. 6 Mod. 222. 3 Salk. 381. Thus the venue was not a cause under the act; where in trepass the defendant pleaded a submission to an award, and that an award was made, which he had performed; but laid no venue where the performance was. The plaintiff replied another award and the defendant tendered issue upon it, whereupon the defendant demurred. Hul Chief Justice said, that the want of a venue was laid by the pleadings over. Lt. Raym. 1339. Purfivaw v. Baily.

So in debt upon bond, tho' no venue is laid where the bond was made, yet if the defendant pleads a releave, this admits the bond, and aids the want of a venue; per Hul Chief Justice. But if the defendant had demurred, the want of a venue had been ill. Lt. Raym. 1240. Purfivaw v. Baily.

By the 16 & 17 Car. 8. c. 8. the want of a venue is aided after verdict; and this in cafes not only where there is a wrong venue, but also where the cause is tried in a wrong county, as appears from the following cases: Groce v. Bisbee. S. C. Raym. 1013. by the name of Crafts 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 venue, are now removed by the 4 & 5 Ann. cap. 16. which enacts, That every venue is stultus, but the trial of any issue in any action or suit, shall be aided of the body of the proper county where such issue is tried. And see Stat. 24 Geo. 2. c. 18. which extends this act to trials of issues on penal fictures.

The venue in the declaration was laid at Leek, and not at Leek in the county aforesaid. Defendant demurred, and thereupon the want of a proper venue for cause, plaintiff joined in demurrer, and upon argument the court gave judgment for the plaintiff. It was sufficient according to the course of the court to lay the venue at Leek which has reference to the county in the margin, and since by the act of parliament the venue facta is to be awarded de corpore comitatus, it is not necessary that any particular place in the county be laid. 1 Jennet's notes in C. B. 342. Spooner v. Millward.

It is a general rule likewise, that the cause in the margin of a declaration will help the venue laid in the body of it, but will not hurt it; as appears from the following cases.

In the margin flood the word Norfolk, in the body of the declaration, the venue 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 venue been laid in the body of the declaration, reference must be had to the margin; but where a proper venue is laid in the body of the declaration, the word in the margin shall not vitiate it, for it is a feudal which is helped by the 4 & 5 Ann. cap. 16. 1 Barnet's notes in C. B. 345.

Hul Chief Justice.

It is to be observed however, that in all real actions the venue ought to be laid in that county where the thing is for which the action is brought, or being local, it is only triable there; whereas matters which are transitory may be tried in any county. 2 Litt. Ab. 782, 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 assignee, &c. the venue shall not be laid out of the county where the land lies upon which the rent is due; for the action is, for want of privilege, general, and extends to the land, and the land out of which the rents are suffered, and not transitory: But where the action is brought by the lessor against the tenant, there being privity of contract, the action is transitory, and the venue may be laid to be made in any other county than that where the land lies. 2 Litt. Ab. 782, 783.

With respect to criminal cases it is ordained by the statute 21 Jac. 1. cap. 4. that all informations on penal fictures shall be laid in the counties where the offences were committed. And upon this statute the following point was decided. 21 Jac. 1. c. 4. See 5 Ed. Ab. 327, 328.

Verdictio, (Vereditio, a Vind. verid. memoria,) is a judicial officer of the King's forest, chosen by the King's writ in the full county of the same shire, within the forest where he dwells; and is sworn to maintain and keep the aforesaid forest, and to view, receive and enroll the attachments and presents of all manner of trespasses of vert and venison in the forest. Manwood, part 1. pag. 332. His office is properly to look to the vert, and see it well maintained. Cremp. jur. fac. 105. His oath, fee and authority, you may see in Manwood, part 1. pag. 51. He is to fix in the Court of attachment, to see the forest, to receive the fame of the foresters and woodwards that present them, and then to enter into them their rolls. Cowell edit. 1727.

Verdictio, (Vereditio, quod dictum orritissit,) is the answer of a jury made upon any cause, civil or criminal, which they commit in the court to their examination. And this is two-fold, general or special; a general verdict is that (Stannif. Pl. Cor. lib. 5. cap. 9.) which is given or brought into the court in like general terms to the general issue; as in an action of deceit, the defendant pleaded as wrong, no deceit; then the issue is general, whether the defendant be in deceit, and the substance of the case being submitted to the jury, they upon consideration of their evidence come in and say, either for the plaintiff, that it is a wrong and deceit; or for the defendant, that it is no wrong, no deceit. 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, do declaring the cause of the fact, as in their opinion it is proved; and 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 veriditio at large, whereof read examples in Stannif. law, Capa. and Co. in lit. fac. 218. Cowell edit. 1727.

Veriditio de bene effe is a conditional verdict, the validity of which depends upon something subsisting to the taking thereof. 5 Bac. Ab. 284.

If the judge before whom a cause is tried is of opinion, that a verdict, he may direct the jury to find one de bene effe; and if it shall upon consideration be thought r. i. to have taken the verdict, it shall be aboolute. Bray v. Mets. 13.

If an action of debt is 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 ef; and if the protection be
difallowed at the day in bank, the verdict shall be absolute. *Br. Prot. pt. 32.

A *prius verdict* is so called, because what is thereby found ought to be a secret to the parties until a verdict is given in open court. 1 Inst. 228.

The judge may lay a verdict only permitted for the case of the jury, that they may reflect themselves; for if either the judge or any one of the jurors happen to die before a verdict is given in open court, the jury verdict is not binding upon either party. *Plews. 211.

**Saunders v. Freeman. Dyer 217. Mor. 33.**

The verdict of a jury or a verdict given in open court can differ from what they have before found by a prius verdict. 1 Inst. 227, Mor 33.

The jury, who had by a prius verdict found for the defendant, did at the next sitting of the court by a verdict given in open court find for the plaintiff. Both verdicts were found upon the same point, it was held, that the latter should stand; *et par cur* the verdict given in open court is the true verdict, the other being only allowed for the sake of the jurors, that they may reflect themselves. *Plews. 211. Saunders v. Freeman. Dyer 217. Mor. 33.*

It is in one book laid down, that a prius verdict cannot be given in any case of life or member. 1 Inst. 227.

In other books it is said that a prius verdict cannot be given in any case of felony; because the jury are directed and ought in every such case to look upon the prisoner as a man, they do no more in finding a general verdict than follow the direction of the judge. 1 Inst. 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 crimem non contrabdomi nij volentiam in nescia*, find a general verdict of not guilty. 2 H. & C. 303. F. 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 judge may, under his direction find a general verdict of not guilty. 2 H. & C. 303. F. 279.

Hence it appears that the jury may with facty to themselves, in any case under the direction of the judge, find a general verdict. *Ed. 256. 327.*

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. *Led. 256. 327.*

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.

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 Batt. 256. 327.

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 judge 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. *F. 326.*

It would too 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 in the opinion of the judge guilty of felony would not be liable to a forfeiture of his goods and chattels, which every person convicted of felony, not-withstanding 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
as the judge is of opinion that the homicide amounts thereto, it is by no means necessary for the jury to find the fact of killing and the circumstances that attend it, and to submit it to the consideration of the court what the offense of is, and find a general verdict. 2. Lith. 795. F. 792. F. G.

If the counsel for one of the parties refuse to sign the minutes for a special verdict, the court may direct the jury to find one of the minutes as signed by one of the counsel for the other party. 2. Lith. 793. G.

It is neither incumbent upon the party, at whose instance a special verdict was found, to draw it up from the minutes as signed 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 as it comes on to be argued, 2. Lith. 31. E. For more learning on this subject, see 5 Bac. Abr. tit. Verdict.


Urgery, (Urgente.) The compas of the King’s court, which boards the jurisdiction of the lord steward of the King’s household, and of the coroners of the King’s house, and that from to have been twelve miles compas. Stat. 13 Ric. 2. c. 6. cap. 3. F. N. B. fol. 24. Britton, fol. 68, 69. Ca. Rep. lib. 4. fol. 47. see also 33 H. 8. c. 12. Fleta, lib. 2. c. 4. fol. 1. lays. This compas about the court is called urgena, a urgena quam maritallius prorat at figem fave petefalt. Verge bath also another signification, and is used for a flake or rod, whereby one is admitted tenant, and holding it in his hand, swears realty to the lord of the manor, for whose cause that tenant is called tenant by the verge. Old nat. brev. fol. 17. and Lit. lib. 1. cap. 10. Cawley, edit. 1727.

Urgeres, (Urgenteres) Mentioned in 28 Ed. 1. fol. 179. or. 27. Wardland.

Urgenteres, (Urgentaries) Are such carry white wands before the judges of either bench. Fleta lib. 2. cap. 38. Otherwise called portateurs verge.

Urknefr. See Urgner.

Ursaria, It is said, that when our favour was led towards the court, the likeness of his face was formed on his handkerchief in a marveulous manner, which is still kept and adored in St. Peter’s church at Rome, and called Veronica. The word is mentioned in Matt. Paris, p. 514. and in Drommond, 121. Conelli, edit. 1727.

Ursell, (Urselle) From the French Ferde, viridiss. Otherwise called verdell. This word is used in legal language to signify that which grows or bears green leaf within the forest that may cover a deer. Mannum, 2 par. fol. 6 & 33. And it is divided into overvurt and nether-vurt. Overvurt is that which covers or hides the wood, and nether-vurt is that which they call futh-bus. And of this you may read Mannum’s 2 par. fol. 6 & 33. There are also 5 of the same supposed vert, and that is all trees that grow in the King’s woods within the forest, and all the trees that grow there in other men’s woods, if they be such trees as bear fruit to feed deer, which are called special vert, because the deflorying of such vert is more grievously punished than the defloration of other vert in the forest. See Kel. 249. Swinburne, 2 par. fol. 6 & 33. Vert is also formerly taken for that power which a man hath by the King’s grant to cut green wood in the forest. See 4 fol. 317.

Urtull, akin of cloth, mentioned in Stat. 1. Ric. 3. c. 8.
paid the money, and then brought a bill for relief. And the matter of the Rolls decreed him his principal, interest, and costs at law, and in this court; and that the defendants, viz. vicar, churchwardens, and overseers of the parish, did refuse the same, 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 decreed to be raised by the same rate; but said, that if those who had appealed to the quarter-feetions had been before the court, they should have paid all the c. 8. 2 Win. Rep. (32d.) Trin. 1731. Blackburn v. White & al. See 21 Fin. Rep. p. 448.

A crop of grafs or corn; and mention is made in ancient charters of primo visita, and sponta ve- nitura, that is the first and second crop. The word was often used for a visit, visiture, livery, delivery, i.e. an allowance of some part portion of the products of the earth, as corn, grafs, wood, i.e. food for the labourers to toome off, servant or labourer, for their livery or victual. So forestors had a certain allowance of timber and underwood yearly out of the forest for their own use.

Visitum Namium, Namium, Signifies a taking or diftreff, and vettura forbidden; as when the bailliff of a lord deprives beasts or goods, and the lord fords his bailliff to deliver them when the sheriff comes to replive them, and to that end drives them to places unknown; or when without any words they are so elobined, as they cannot be releived. Divers lords of hundreds and courts baron have power to hold plea de vettura namium, in old books, De part. of 19. cap. 1. 14. El. 4th. See Hals, Hist. of the Barons. Vettura, The Highways, or common road, called the King's way, because authorized by him, and under his protection. Leg. Hen. 1. c. 80.

Visitum, (Vicius,) quod vixi fungenis regalis. (The) prieff of every parish is called rector, unless the predial tithes are appropriated, and then he is called vicar; and when rectories are appropriated, vicars are to supply the rec- tor's place. At first a vicar was a mere curate to the impropriator of the church, temporary, and removable at pleasure; as those who are now parish priests in ancient times when there were no particular parishes, were only curates to the bishop, but by degrees the vicar got a firft maintenance of glebe, and some kind of tithes, and now claim their dues either by endorsement or by prescription; And where the vicar is endorsed, and comes in by institution and indufion, he hath curiam an- iminarum actualiter, and is not to be removed at the plea- sure of the rector, who in this case has no curiam an- iminarum. And if the vicar is not endorsed, nor comes in by institution and indufion, the rector hath curiam animinarum actualiter, and may remove the vic- ar. 1 Vict. 15. 3巷. 378. In every church appor- tioned one is to be ordained perpetual vicar, and to be canonically instituted and inducted, and also endowed at the discretion of the ordinary; which endowment is a part of the reftory, set out by the patron, parfon, and ordinary, for maintaining the vicar: The indufion and in- duction, &c. of vicars is done in the fame manner as that of rectors; and over and above they are to take a tax or vicarage, if it is customary, but this the bishop may dif- pense with; the statutes concerning pluralities, diapla- dations, &c. relate to them as well as to parsons. 4 H. 4. 2 Rel. Acr. 337. Upon endowment, the vicar hath an equal, though not to great an interest in the church as a rector; the freedold of the church, church-yard and glebe is in him; and as he holds the freehold of the glebe he may preferbe to have all the tithes in the parish, ex- cept thofe of corn, &c. Many vicars have a good part of the great tithes; and some benefices, that were formerly levied by impropriation, have, by being united, had all the glebe and tithes given to the vicars; But tithes of corn are always brought to the vicar by gift, composition or preffcription, for all tithes due de jure app- pertain to the parfon; and yet generally vicars are en- dowed with glebe and tithes, especially small tithes, &c. If a vicar be endowed of small tithes by prescription, and afterwards land, which had been arable time out of mind, is altered, and there are growing small tithes thereon, the vicar shall have them; for his endowment goes to such tithes, in any place within the prifh. Cro. Eliz. 457. Husb. 39. But where the vicar is endowed out of the parfonage, he shall not have tithes of the parfon's glebe, or of land that was part therof at the time of the vicar's benefice, and yet is not now devoted to the vicar. It seems to be otherwise, if the glebe lands are in the hands of the parfon's leflee. Cro. Eliz. 479. Mallor. Q. Inf- pol. 4. The endowment of vicarages hath been always in the church, the vicars for the most part have the cure of souls. 2 Rel. 335. Comp. Incur. 347. March 11. 39.

There shall be a secular vicar endowed upon every ap- propriation, 15 R. 2. c. 6. 4 H. 4. c. 12.

The profits arising during the vacancy of a benefice go to the next incumbent, 28 H. 8. c. 11.

An incumbent may take the corn fown on his glebe, 28 H. 8. 6.

Where the King shall have the advowson of vicarages, 1 El. c. 4. f. 25.

The qualifications requisite for a benefice with cure, of the yearly value of 30l. 13 El. c. 4. f. 6.

Where a man may be deprived for holding a doctrine contrary to the church, 14 Ann. 4. c. 15. f. 2.

What age, and what subscribing and reading of the articles, requisite, 13 El. cap. 17. f. 3. 23 Geo. 2. cap. 28. f. 2.

Remedies against simoniacal presentations, 31 El. c. 6. f. 2. 12 Ann. fl. 2. c. 12.

Reading and absent from the Common Prayers, required for a benefice, 15 & 16 Car. 2. c. 4. f. 6. 7. 23 Geo. 2. c. 28. f. 1.

The penalty for accepting a benefice without prieff's orders, 13 & 14 Car. 2. c. 4. f. 14.

Owners of impropriations may annex them to the par- fonage or vicarage, 17 Car. 2. c. 3. f. 7.

Impropriation not being above 100l. the vicar may purchase to themselves and their successors, without licence of mortmain, 17 Car. 2. c. 3. f. 8.

Augmentation of small vicarages and curacies by re- feruations in leaves of tithes perpetuated, 29 Car. 2. c. 2. f. 8.

The augmentations of small livings provided for by erecting a corporation to receive a grant of the first fruits and tenths from the crown, and grants from private per- sons, 2 & 3 Ann. c. 11. 1 Geo. 1. fl. 2. c. 10.

Provisions that such grants shall not prejudice former grants of first fruits, 2 & 3 Ann. c. 11. 3. 5 Ann. 2. 3 Geo. 3. c. 20. f. 5.

Rectors, &c. may purchase lands to the yearly value of 200l. 10 Ann. c. 11. f. 10.

Bishops enabled to appoint temporaries for curates, 12 Ann. f. 2. c. 12.

Clericages, (Vicarium,) Of places did originally belong to the parsonage or rectory; being derived out of it: The rector
vicar of common right is patron of the vicarage; but it may be fettered otherwise; for if he makes a leafe of his parsonage, the patronage of the vicarage falls as incident to it. 2 Rev. Ab. 59. And if a vicar be made void, during the vacancy of the parsonage, the patron of the parsonage shall pretend to such vicarage. 19 Ed. 2. 41. If the profits of the parsonage or vicarage fall into decay, that either of them by itself is not sufficient to maintain a parson and vicar, they ought again to be reunited; and if the vicar be not sufficient to maintain a vicar, the bishop may compel the rector to augment the vicarage. 22 Ed. 373. Perfect Concill. 195, 196. Stat. 19 Cor. 2. 8. Upon the appropriation of a church, and endowment of a vicar out of the same, the parsonage and vicarage are two different ecclesiastical benefits: And it is not enough, that there where there is a parsonage and vicarage endowed, that the bishop in the vacation may dissolve the vicarage; but if the parsonage be improper, he cannot do it; for on a dissolution the cure mutt revert, which it cannot into lay hands. Comp. Incumb. 2 Cr. 518. For the most part vicarages were endowed without any appropriation of the parsonage; and there are several churches, where the titles are wholly improper, and no vicarage endowed; and there the impropriators are bound to maintain curates to perform divine services. £c. The parson, patron, and ordinary, may create a vicarage, and endow it: And in times of the vacancy of the church, the patron and ordinary may do it; but the ordinary alone cannot create a vicarage, without the patron's assent. 17 Ed. 3. 51. Cr. Tax. 516. Where there is a vicarage and parsonage, and both are vacant, and in one person's patronage; if he presents his clerk as parson, who is therewith inducted, this shall unite the parsonage and vicarage again. 15 H. 6. 32. Vicarage or not, is to be tried in the spiritual court, because it could not begin to be created but by the ordinary. 3 Sal. 378. Vitriol deliberando oraculorum rubrism recognitio, &c. Is a writ that lies for a spiritual person imprisoned, upon forfeiture of a recognizance, without the king's writ. Reg. of writs, fol. 147. Vitechamberlain, (called under-chamberlain, in stat. 13 R. 2. fl. 2. cap. 1.) is a great officer in court, next under the lord chamberlain, and in his absence hath the control and command of all officers whatsoever appertaining to that part of his Majesty's household, which is called the court household. Stat. 31 R. 1. fol. 723. Vide tape. Vitecountable of England, and Finland, shall give their office in Pat. 32 Ed. 4. par. 1. m. 2. printed in Pryor's Almanac, on 4th July, fol. 71. Vitechancellor, The fame as vicerecy or sheriff. Leg. Ed. Conf. cap. 12. Vite-dominus, The same also as vicaremes, as Selden tells us in his Titles of honour, 2 Parc. cap. 5. par. 20. and in Leg. Hen. 1. cap. 7, and Inglushaus writes, that Vice-dominus dedit us profexit praeval. Vite-dominus Cyllrope, The official, commissary, or vicar-general of a bishop. Viteeregrat, (mentioned in Stat. 31 H. 8. cap. 10.) A deputy or lieutenant. Viteinage, (Vicetinent, French Vifinage.) Neighbourhood, near dwelling. Mag. Charus, cap. 14. See Usinage. Vitis 8 vernicia mutandis, Is a writ that lies against a mayor or Bailiffs of a town, &c. for the clean keeping their streets. Reg. of writs, fol. 265. Vide. Vitecount, or Vite-count, (Vicemcieni) Signifies as much as Sheriff: Between which two words, there seems to be no other difference, but that the one comes from our conquerors the Normans, the other from our ancestors the Saxons, of which, see more in Svecif. Vicanist also signifies a demesne or manor, next to an earl, which Camden. (Britan. pag. 170.) says, is an old name of office, but a new one of dignity, never heard of among us, till Henry the sixth's days, who in his eighteenth year in parliament created John lord Beaumont, vicount Beaumont, but far more ancient in other countries. Cajon, de gloria mundi, par. 5. confer. 55. See Sheriff and Selden's Titles of honour, fol. 761. Viteclitruit, Is an adjective made of vicen, and signifies as much as belonging to the fisces; as write civentill, are such writs as are triable in the county, or sheriff's court. Old nat. brev. fol. 109. Of this kind you may see divers sorts of nuisance set down by Fitzherbert in his Nat. brev. fol. 124; Viteclitruit, vicenclitimia, are certain farms for which the sheriff pays a rent to the King, and makes what profit he can of them. See the Stat. 33 & 34 H. S. cap. 16. 2 & 3 El. 6. cap. 4. 4 H. 5. cap. 2. 6 R. 2. cap. 3. Viteclitruit jurisdiction, Is that jurisdiction which belongs to the officers of a county, as sheriffs, coroners, &c. Viteclitruit rents, Mentioned 22 Cor. 2. fol. 6. See Viteclitruit. The vicentill rents, usually came under the title of Firma commutus, which were written generally infra nomine vicemium, without expression of the particular. The sheriff had a particular right of the vicentill rents given to him, which roll he delivered back with the accounts. See Hale's vicentill accounts, pag. 40. Vitealts and Vitealturers, Iniquity to be made in eyre if butchers and cooks fell wholehome vscluals, Judic. pillor. 51 H. 3. 6. f. 3. Magistrates keeping the affize of vscluals shall not give wine or vscluals, St. Elor. 12 Ed. 2. fl. 1. c. 6. R. 2. 22. A restraint of the excess of tables, St. de Ciber. 10 Ed. 3. 5. f. 3. Vitealts shall be sold at reasonable prices, 23 Ed. 3. c. 6. Vitealts may be sold freely in London, and the defaults of vitscluallers to be redressed by the mayor and aldermen, 31 Ed. 3. 1. 6. c. 10. Prices of vitscluals fixed, 37 Ed. 3. c. 3. Shall be sold by retail by Londoners only, 42 Ed. 3. c. 7. Aliens in amity may retain their vitscluals in London, 6 R. 2. c. 10. Repealed. 7 R. 2. c. 11. Enforced by 1 H. 4. 7. Vitscluallers shall take reasonable gains, at the discretion of the judicatures, 13 R. 2. fl. 2. c. 8. 2 H. 6. c. 14. Parents shall not be granted of the survey of vitscluals, 12 Ed. 4. c. 8. When a vitsclualler is chosen chief magistrate of a town, &c. the vitsclualler shall be elected to have the correction of vitscluals, 3 H. 8. c. 8. Prices of vitscluals to be fixed by the lords of the council, and by the chief magistrates of towns, 25 H. 8. c. 2. Vitscluals shall not be exported without licence, 25 H. 8. c. 2. 5. 6. 7. 11. Pl. &c. M. c. 5. Conspiracies of vitscluallers and handicraftsmen to raise their prices, prohibited on pain of pillory, &c. 2 & 3 Ed. 6. c. 15. Corn, beef, &c. may be exported, when they do not exceed limited prices, 12 Car. 2. c. 6. f. 11. 22 Car. 2. c. 135. Importation of foreign beef, pork and bacon, prohibited, 18 Car. 2. c. 2. 20 Car. 2. c. 7. Beef, pork, bacon, butter, cheese and candles may be exported, 22 Car. 2. c. 13. f. 4. Duty on butter and cheese exported, 22 Car. 2. c. 13. f. 5. Beets, &c. may be exported free, 3 H. W. &c. M. c. 8. Importation of foreign bacon permitted, 5 H. W. &c. M. c. 2. f. 4. A tax on the vitsclualers in London, in consideration of their being prohibited to fend out pots, 12 Geo. 1. c. 12. Repealed, 16 Geo. 2. c. 12. Vitecount, or Vitecount, The same as vicadimus, and was heretofore the bishop's deputy in temporal, as the Earl was the
V I E

the King's, in affairs of the county. Cowell, edit. 1727.

V I L

Undefect. A vice鹿e in a deed may make a separation, as well as an habendum. And if there be a several habendum, of an annuity of 20l. to one, and so to four others; it will be to the same effect, that, it says habendum 100l. to them, to be equally divided, (21. 20.) so the sheriff may have four of such entries.

Uditiatus professo. The making a solemn profession to live a holy and chaste life, for the benefit of our Lord Jesus Christ. Pug. 1. c. 3. See Hone, 6. e. 3. See Juxtaeformitas.

V I T

Ut et armis. Are words used in indentures, &c. to express the charge of forcible and violent committing any crime or trespaf; But on appeal of death, on a killing with a weapon, the words ut & armis are not necessary, because they are implied; or in an indenture of forcible entry, alleged to have been made manum firmi, &c. 2 Hawk. P. C. 179. 1 Hawk. 150, 220. and where the omission of ut & armis, &c. is helped in indentures, see the fl. 45 of 2 Ann.

V I V

Cifeb (Fr. vues, i.e. vises) Is generally where a real 26l. is intended, and the tenant does not know certain what is demanded; 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; and lies in ejectment, wills, affe& of novel dilution, where at the half fix of the recognizances, may be made before the affect. 2 Litt. Ab. 625. Stat. 11 Ed. 1. c. 38. 12 Ed. 2.

By Stat. 45 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 a special view of distressing or lands. And if the parties commanding the sheriff to have view 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 Stat. 3 Geo. 2. c. 25 (the balloting act) § 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, (for 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 been long established in the courts, the parties 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 effect 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, o: even without any view, than he delayed for a greater length of time: Accordingly they added a special view of distressing or lands, in the 3 Ed. 3. rule 46. And it is obvious that the party praying a view conveuted ' That in case no view should be had; or if a view should be had by any of the jurors whomsoever, (this not being fix of the first twelve;) yet the trial should proceed, and no objection be made on a count thereof, or for want of a proper return. Since which, motions for views are become motions of course, with such additional content annexed to them. Bur. Rep. 256.

See the form of the'* usual rule, and also of the modern addition, both in cases to be tried by special jurors, and those to be tried by common jurors, respectively registred. See V. 32. 33. 34. 35.

View of frankpledge. (Vetus fumi plagi). Is the office which the sheriff in his county court, or the bailliff in his hundred, performs in looking to the King's peace, and seeing that every man be in true peace. This is called by Gratton, ibid. 2. cap. 5. num. 7. in Fo. Res. Vol. II. No. 132.

V I X


Vigil. (vigilid, mentioned in flat. 2 & 3. E. cap. 19.) Is used for the eye 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.

Vita feta removenda, A writ that lies where two persons contend 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 force of the bailliff or sheriff ought not to go out the church, whether he is there by right or wrong, but only the force. F. N. B. 54. 3 Jef. 131. and see R. 2. c. 2. And the writ vi vita removenda ought not to be granted, until the bishop of the diocese where such church is, hath certified into the chancellor, or the sheriff; &c. &c. that it is laid in the New Newton brevium, it lieh under a formica made by the incumbent, or by him that is griev'd, 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 vita removenda. Crop. R. cap. 46.

Villa. (Villa) Is sometimes taken for a manor, and sometimes for a parish, or part of it. Villa ex pluri- bus manufactis vicinata, et collata ex pluribus vicinis. 1 Jilt. 105. b. and par. shall be intailed all one. Crop. R. 3 par. 623. Why's case, yet there may be the same view allowed, as in 2 Litt. Ab. 625. As the building was not an inhabited house. Bradton tells us, St quis in urbi adores pictius fictius edificium, non est ihi villa; sed cum ex praeficio temporis captatis caduantur & vicinari adiuvia. Lib. 4. cap. 21. And Forsi- cxe in Lond. Leg. Aegles, cap. 24. writes that the boundaries of villages is not by houses, fountains, or walls, but by a large circuit of ground, within which there may be several hamlets, waters, woods and walled ground. Fleta likewise mentions the difference between a man- nor and a village, a manor may be of one or more houses, but it must be but one dwelling place, and none were it; for if other houses are contiguous then it is a village; a manor may confide of several villages, or of one alone. Lib. 6. cap. 31. Cowell, edit. 1727.

By intention of law, every parish is a vill, unless it be found to the contrary. G. Litt. 125. b. S. P. ad- judged. 2 Salk. 57. Mich. 67. 3 Whitt. v. Lewis. 57. 6 Whitt. 51. 41. 51. There is no difference between the other party must shew it. L. Rogn. Rep. 22. S. C.

As to villis and parishes, the law originally took notice of a vill only because the division of a county into parishes was of ecclesiatical distribution; but now, by process of time, that difficulty is taken notice of in civil affairs; per Cap. 2 Id. 238. Titus. 29 Car. 2. C. B. in case of Addisn v. Otway. Tho' a place named shall be intailed a vill or town, yet always the date of a deed shall be intailed to be a particular place or house; and therefore if an obligation bears date at Antwerp, &c. it shall be intailed to be such place as the Act and registry shows, and not such a place beyond sea. Arg. and granted per 3 Just. 4. 5. in Ward's case. If a place be named generally, that place shall be intailed to be, and intended a vill. 2 Salk. 501. Mich. 10 W. 3. B. R. Pinkston v. Elden.

Every vill may have a confable; otherwise it is but a hamlet, per Holt Chief Justice. 12 Id. 18. in case of The King v. Hauzen. See Patrib.

Villa regia, A title given to those country villages, where the Kings of England had a royal feast or palace, and held the manor in their own demesne, and had there commonly a knee chapel, not subject to ecclesiatical or episcopal jurisdiction. So in the dedendum in the title of Rayg, the title of Rayg was Rayg, and the title of CAMPS or Camg. So was Holingdon, com. Oxon, &c. Paroch. antiqu. pag. 53.

Villain, (Familiarus) Signifies as much as fervus among the civilians; a man of servile or base degree, from the French villain, viller, or from the Latin villus, a country farm,
farm, whereon they were deputed to do services. Of these bond-men or villains, there were two sorts in England, one termed a villain in graft, who was immediately bound to the person of his lord and heirs. The other a villain regardant to a manor, whom the civil servants termed vilp'age, being bound to his lord as a member belonging and annexed to a manor, whereby the lord owned. Smith, ibid. lib. 3. cap. 8. Old Nat. Brac. fil. 8. and Bracton, lib. 1. cap. 6. num. 4. He was properly a perfect villain, of whom the lord took redemption to marry his daughter, and to make him free; and whom the lord might put out of his lands and tenements, goods and chattels at his will, and beat and box him, but there were only any villains now, and we have not heard of any case in villenage since Cruceul's case in Dyrr. Cowell, edit. 1777. Villain shall be amerced, faving his waggage, 9 H. 3. c. 14. To be sworn of inquests for want of freemen, St. Exm. 14 Ed. 1. The lord shall be preferred to any other master in retaining his villain for a servant, provided he does not retain more than are necessary, 25 Ed. 3. c. 1. The lord may alledge villenage by way of exception, or seize his villain notwithstanding a liberate pro domino depending, 25 Ed. 3. st. 5. c. 18. Court repays every case of the exception of conuance of villenage, 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. The King's villains in North Wales shall be obliged to do the same services as before, 25 H. 6. Exception of villenage, 3 Hen. 7. c. 2. f. 4. See Villenage. Villain clute or condition, Contradistinguished to free estate. Stat. 8 H. 6. 11. They were called villains from villae, because they dwell in villages; they were also called pageus, because they are one of the inferior sort of service, and that 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 inoffensive. Cowell, edit. 1777. Villainus regis furniatus eubriestate, is a writ that lay for the bringing back of the King's bond-men, that had been carried away by others out of his manors where they belonged. Reg. Orig. fil. 87. Villainus judiciarius. (Villainum judicium) Is that which calls the reproach of villainy and shame upon him against whom it is given, as a coniparitor, &c. And the judgment in such a case shall be like the ancient judgment in action, viz. that the offender shall not be of any credit afterwards; nor shall it be lawful for him to appeal to the King's court, and his lands and goods shall be seized into the King's hands, his trees rooted up, and body imprisoned, &c. Stentoff. P. C. 157. Lamb. Eich. 63. Stat. 4 H. 5. And the punishment at this day appointed for perjury may partake of the name of villainous judgment; as it hath somewhat more in it than corporal, or pecuniary pain, i.e. the differing the testimo- nies of the offender for ever. See Perjury. Villain fleeces, Are fleeces of wool, that are shorn from fleeced sheep. 31 Ed. 3. cap. 8. Villenage. (Villenage, from Villain,) Signifies a ser- vice called the tenement belonging to land or tenements, whereby the tenant was bound to do all such services as the lord commanded, or were fitted for a villain to do. Un fecr non potest voverre quae servitium fieri delict manc. For every one that held in villenage, was not a villain or bondman: Villenage vel servitium est, un fecr non potest voverre quae servitium fieri delict manc. These terms never were taken by villains & ten- urias in villanos fundos de dominicis domini regis. Bract. lib. 1. cap. 6. num. 1. The division of villenage was into villenage by blood, and villenage by tenure. Tenure in vil- lenage could make no Freeman villain unless it was continued time out of mind, nor even free land make a villain free, and Bracton, lib. 3. cap. 8. num. 3. divides it into four differing villenages, a quae propter servitium inercia et indeterminatione, ubi fecr non potest voverre, quae servitium fieri delict manc; viz. ubi quis facit tenetor quaequidem ex servitium fuerit; the other he calls villanum faculatium, and was tied to the performance of certain services agreed upon between the lord and tenant, and was to carry the lord's dues into his fields, to plough his ground at certain days, to reap his corn, plath his hedges, &c. as the inhabitants of Bicton were bound to do for those of Clan-taile in Strathclyde, which was afterwards turned into a rent, now called the Bicton ferry, and the ferry excayed. There were likewise villaini jaclamentum, which were those who held their land in socage, and there were villaini ad- ventilis, who were those who held lands by performing certain services expressed in their deeds. Bract. lib. 2. cap. 8. See Socage tenure. Villain, (Villainum a villio) A payment of a certain quantity of wine instead of rent, to the chief lord for a vineyard. Mon. Angl. 2 tom. p. 560. Vinegar, vinegar beer, and brettus. Every ton of vinegar imported for defraying the expenses of coinage pays ten shillings, 18 Car. 2. c. 5. f. 6. And every ton of vinegar imported, 8 S. 1. facr. 2. c. 9. f. 2. And if by Englishmen four pounds, 13 & 14 Car. 2. c. 11. f. 25. And if by strangers, fix pounds, 13 & 14 Car. 2. c. 11. f. 25. Every barrel of vinegar, or liquor prepared for vinegar, that hath run through rape, &c. eight shillings, 2 W. & M. Jeff. 2. c. 10. f. 2. And four shillings, 4 W. & M. c. 3. f. 2. And four shillings, 5 W. & M. c. 7. f. 27. And four shillings, 5 W. & M. c. 20. f. 10. And every barrel of vinegar beer made of English mate- rials, expece, 12 Car. 2. c. 23. f. 2. And Expece, 12 Car. 2. c. 24. f. 20. And Expece, 22 & 23 Car. 2. c. 5. f. 1. And three shillings, 2 W. & M. Jeff. 2. c. 10. f. 2. And one shilling and expece, 5 W. & M. c. 7. f. 27. And one shilling and expece, 5 W. & M. c. 20. f. 10. And every barrel of vinegar or foreign materials, eight shillings, 10 & 11 W. 3. c. 21. f. 9. And two shillings 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. 21. f. 15. Information against vinegar makers for a false misfor- ny, &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 except 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. 4. Additional duty of 8 d. per ton on French vinegar im- ported, 3 Gen. 3. c. 12. And on all other vinegar imported, 4 l. per ton, id. Vineries, The owners of vineyards may make wine of British grapes only growing there, free from any duty, Stat. 30. c. 22. Hinnor, A kind of flower or border, which printers use, to beautify printed leaves in the beginning of books. See plt. 14 Car. 2. cap. 33. Wines, See Wine. Violence, (Violentia) All violence is unlawful: if a man afflicts another with no intention of harming him at all, and he only intend the
VIV

yon the provocation. Kel. Rep. 64, 131. There is a violence in committing riots, &c.

Ungano, or an old man, is such as sheriffs, laiiffis, &c. carry as a badge or ensign of their office. Cowell, ed. 1727.


Viridario eligendo. Is a writ that lies for the choice of a rector or the tithes. Reg. Orig. fol. 177.

Viridibus Lubo. Is a sort of many colours, for in the old books viridis is used for various. Bracton, lib. 3. cap. 11.

Virilia. The privy parts of a man; to cut off which was felony by the common law, whether the party consented or not. Bracton, lib. 3. fol. 44.

Viridom. See Utritur.

Vilification. (Vilification,) 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 etiam cura omni commississii salutarem & ordinis gubernator ; Et ne quid detrimenti caperit ecclesia, &c. Reform. Leg. Ecl. p. 124. And when a vilification is made by the archdeacon, all acts of the bishop are suspended by inhibition. &c. A commissary by his act of vilification, cannot cite lay parochioners, unless it be churchwardens and sidemen; and to these he may give his seal, and impose to their suits. Nov. 123, 3 Salk. 370. Proxies and procurations are paid by the parsons whose churches are visited. &c. Ibid.

Vilitor. Is an inspector of the government of a corporation, &c. the ordinary is vilitor of spiritual corporations; but corporations instituted for private charity, if they are lay, are vilificable by the founder, or whom he shall appoint; and if the violence of such vilitor lies not appeal. 3 Salk. 381. By implication of law, the founder and his heirs are vilificors of lay foundations, if no paricular person is appointed by him to fee that the charity is not perverted. Ibid. And where founders are vilificors of hospitals, &c. The appointment of a bishop without his kinsman's name to be a vilitor, extends to his successors. 2 Str. 913. The vilitor in his citation must purifie his authority. Ibid. He may punish one man for acts done by him jointly with others. Ibid. Offences against the statutes of a college are not pardoned by an act of grace. Ibid. 912. See R. 39 Eliz. 279.

The King to be vilificor of colleges and other religious foundations, that were exempt from the ordinary's visitation, 25 H. 8. c. 21, f. 20.

Abbeys, &c. that were exempt from ordinary visitation, to be subject to such visitation as the King should appoint, 31 H. 8. c. 12, f. 23.

Queen Mary imposed to make statutes for the collegiate churches founded by King Henry 8. 1 Mar. 2. c. 9.

The crown to visit Mancipular college, while the wardenship is held by the bishop of Chelms. 2 Gen. 2. c. 32.

Vilistency of Swanes. In ancient times was wont to be the name of the Regarder's office in the forest. Mon- wood, par. 1. pag. 195.

Viluce. (Fijnature.) Signifies a neighbouring place, or place near at hand. 19 B. 2. c. 6. See Utritur. &c. Vilem. 10.

Vilum. As we are to take per usum forfaturi, &c. Hoved, 782.

Vita Indurata 7 Legis. A sheriff of the county is said to be the life of justice, as not fat begins, and no procès is served but by him; and after suits are ended, he hath the making execution, which is the life of the law. Lit. 3.

Vilarb. (Tivarium.) Signifies a place of land or water, where living creatures are kept. In law it signifies most commonly a park, Warren, fifth-pond or pilet: Ca. 2 Insf. fol. 100.

Vida viti, is where a writ is examined personally. See Deposition.

Uritis, A bulk, or ship of Burton, Leg. Etcheldi Regin, cap. 23.

Ullage, The fame with alnage. See Alnage, &c.

Ullafera, Is the standard ell of iron coats in he Exchequer for the rule of measure. Mon. Agil. tom. 2. pag. 282.

Umpire, (Arbitr.) One chosen by compromise to decide indifferently between both parties. Litt.

Umpirage, Is where there is but one arbitrator of matters submitted to award, and is usually when the parties shall submit the arbitration of certain persons: and if they cannot agree, he is not bound to deliver their award in writing before such a time, then to the judgment of another as umpire: And this is often the effect of bonds of submission to arbitration. 1 Rot. 201, 262. See Arbitrator.

Ulla cum omnibus alitis, In the grant of a deed, is a new addition of other things that were granted before, and hath its own conclusion attending it. H. 175.

Uncertainty: This is an oblique word, mentioned in Leg. Htcr, cap. 37, vix. He who kills a thief, may make oath that he killed him in flying for the fame, &c. parents, &c. sediditur, foret unceerf, that is, that his kindred will not revenge his death: From the Saxo cæs, litis, and un, which is a negative particle, and signifies without, and ath, which is oath, i.e. to swear that there shall be no contention about it. Cowell, ed. 1727.

Uricia terrae, Uncia agris. These phraxes 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 pffibly 100 foot square. Min. Ang. tom. 3. p. 198.

Ungate, Where is a plea for the defendant, being fixed for the purpose of the plaintiff's action, and the plaintiff's answer, And he that sues first, to have the belief of his own story, and if he tarried any longer, then he was called aheinie, that is, familiaris, whom, if he offend against the King's peace, his hoft was to see forth-coming; or if he could not bring him out within a month and a day, he must satisfy for his offences. Lamb. Archit. fol. 193. num. 7, and Bracton, lib. 3. cap. 10. num. 2. writes thus of the same. Item secundum antiquam costitutionem dicti potestatis vel famillie accipiens, qui hofperus fuerit cum ilia per tres noites, quia prima nox potestatis dicé uncuth: secunda uera, guefis, tertia nox legitime. See Third night afterfain.

Ungate, Is a writ of dower, concerning which, see Dote unto nigh habet.

Under-Chamberlain of the Orchequer. Is an officer there that cleaves the taffles, written by the clerk of the taffles, and reads the fame, that the clerk of the pelh, and the comptrollers thereof, may fee their entries be true. The Office takes for the King, payable to the treasury, and hath the custody of Domeflay llock. There are two officers there of this name. Cowell, ed. 1777.

Under-Circhartor, (Sub-Ecchartor.) Mentioned in Art. 5. 3. c. 4. See Circhartor.

Under-Sherriff, (Sub-Fiscemon.) See Sherriff, and at fone.

Undertakers, Were such as the King's purveyors employed as their deputies. Stat. 2 & 3 Ph. & Mar. cap.
And 4 Is See This not signifies this.

This is the Exchequer in the statutes till Queen Elizabeth’s time, where it is styled the Bishop of England. He is also written treasurer of the Exchequer: Read the statutes 8 E. 3.-stat. 2. c. 17; 2 E. 3. stat. 2. cap. 18. 1 Rich. 2. cap. 5. 4 H. 4. cap. 18; 8 H. 8. cap. 17. 27 H. 8. cap. 11.

Underfriars, Minor(s), or possessors under age; not capable to bear arms, &c. 2 P. & M. c. 15.

Angler. A person far out of the protection of the law, that if he were murdered no gelt or fine should be paid, or composition made by him that killed him. Leg. Elizeth.

Chaplet Act: This is mentioned in Brumton, Leg. Elizeth, leg. 89th; and it signifies the same thing. Where a person was killed attempting any felony, he was to lie in the field unburied, and no pecuniary compensation was to be paid for his death: From the Sax. mo, without, gela, jilatis, and accra, ager. Cowl., edit. 1777.

Uniformity, (Uniformity,) One form of public prayers and administration of sacraments, and other rites and ceremonies of the church of England, to which all must submit; preferred by the statutes 1 Eliz. cap. 2. 13 & 14 Car. 2. cap. 2. See Nonconformists.

Unio., (Unia,) Is a combining or confederating of two churches into one, which is done by the consent of the bishops, the patron, and the incumbent: But there are two other sorts of it, as where one church is made subject to the other, and when one mas is made rector of both, and when a conventional is made cathedral, as you may read in the chapter Lex de locis & conductis, in Lidtewolde’s provincialis, sect. Et quin. In the first signification by the statute 37 & 38 H. 8. cap. 21. Your church or confederating, or confederating of two churches in one, whereas the one is not above fix pounds in the King’s book of the first fruits, and not above one mile d’Hont from the other. And by another statute made 17 Car. 2. cap. 3. It shall be lawful for the bishop of the dioceze, mayor, alderman, or other corporation-town, or the patron or patroness, to unite two churches or chapels in any such city, town, or the liberties thereof: Provided such union shall not be good, if the churches so united exceed the sum of one hundred pounds per annum, unless the parishioners of the other church, &c. Cowl., edit. 1777. Publishers of the parish united to contribute See 4 Will. & M. c. 12. See 21 Jam., 2n. 592-599.


Union of Parliament, (Uniones parliamentis,) Is called excluditum prius et inestimabiles in the Civil Law, and signifies that which is of two rights by several titles. As for example, if I take a lease of land from one upon a certain rent, and afterwards I buy the free-solem, this is an union of 2 titles, by which the lease is extinguished, by reason that I, which before had the occupation only for my rent, am become lord of the same; and am to pay for what I take out of the land, &c. Cowl., edit. 1777.

A bishop for years of an advowson, on the church becoming void, was professed by the lessee, and instituted, and it was lawful, that this was a forreder of his lease; for they cannot find a getter in one person, and by the act of possession one of them is extinguished. Hat. 105. No unity will extinguish or fortify rights; but notwithstanding any unity they remain, &c. 12 Eliz. p. 568. Unity of possession extinguishes all privileges not expressly necessary; but not a way to a close, or water to a mill, &c. because they are such privileges as are not set up in the law, and do not exist during the unity, wherefore they are gone. Latch 152.

1 Font. 65. Tit. 7 W. 4.

University, Universities, is most usually taken for those two Bodies which are the nurseries of learning and liberal sciences in this kingdom. Ox. and Cambridge are endowed with great privileges, as appears not only by Stat. 2 & 3 P. & M. c. 15. 35 Eliz. c. 21. 18 Eliz. 6. but much more by their several charters granted by divers pensions and manifest acts of this kind. Cowl., edit. 1777.

By universities in general, we understand those feniniaries of learning where youth are sent to finish 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. 5 Bro. Ar., 350.

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 causes arising within the university according to the course of the civil law: But this chart, and all ancient as the fact 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 special act of parliament was made in the 13 Eliz. confirming all former letters patent, and all manner of liberties, franchises, which they held, or of right ought to have enjoyed, &c. 4 H. 7. 50 Eliz. p. 13. Archbp. of York v. Schoob.

By letters (not confirmed by parliament) dated 30 March 12 Car. 1, granted to the university of Oxford, their old privileges are explained, and larger granted. 1 Med. 164. Magdalen college cante, Wood’s Inst. 541.

Their courts are called the chancellor’s courts. The chancellors are usually peers of the realm, and are appointed over the whole university. But the courts are kept by the vice-chancellors their affiants or deputies; the causes are managed by advocates or proctors. Id. ibid. By 8 Car. 2. 74 H. 8.

These courts have jurisdiction in all causes ecclesiastical and civil (except mayhem, felony and freehold) where a scholar, servant or minister of the university is one of the parties in suit, Id. ibid. and Car. 73. Wilks v. Bradsh. But for the petition against the 72nd of Hen. 4, in Parent’s pamph. p. 398, 399.

Their proceedings are in a summary way according to the practice of the civil law; and in their sentences they follow the judge 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. Car. 73. Wilks v. Bradsh. Hallie 25. Thomas Wilks’s case. Hard. 508. Castle v. Lindfield.

If there is an erroneous sentence in the chancellor’s court of the university of Oxford, all appeal lies to the congregation, there to the congregation, 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 Inst. 559. 2 Ed. Raym. 1546. The King v. The chancellor, &c. of Cambridge. As by charter confirmed, as above mentioned, by act of parliament, organization is granted to the university by the charter of arts arising any where in law or equity against a scholar, servant or minister of the university, depending before the justices of the King’s Bench, Common Pleas and others there mentioned, and before any other judge, tho’ the matter concern the King: If an inquisition of ante-fitter is brought by the parties in the exchequer against a scholar or other privileged person, the university shall
have confluence, for the court of exchequer is included in the general words, Cr. Cas. 73. Wilcock v. Brad.
If a debtor and accountant to the King fees a scholar, by way of an exchequer process, or an attorney fees a scholar by writ of privilege, it is said that the universitie
shall not have confluence, for a general grant shall not take away the special privilege of any court. Hard. 189.
petent. S. P. 3. Lyon. 149. The lord Anderson's case. 2 Dall. 102.
But in the cafes where privilege is allowable, a scholar,
&c. cannot waive his privilege, and have a prohibi-
tion in the courts of Wythersley, for the university by
right has the confluence of the plea, where one is a privi-
leged person, & a seargent is forced to sue a privileged
person in their courts by seafon of that right veiled in
them. Cr. Cas. 73. Wilcock v. Braditt. Hall. 28.
Thomas Wilcock's cafe.
But a schel which ought to be resistent 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 Wilcock's cafe.
The cafe, that is said that servants of the university are privi-
gled, yet it has been held, that a bill f a college was not capable of privilege. Brownl. 74. Carrv v. Braditt.
Neither is a townman intitled to privilege, to exempt
him from an office in the town, if he keeps a shop and
follows a trade, tho' he is matriculated as servant to a
scholar. 2 Feet. 106. The city of Oxforu's cafe.
It is to be observed, that tho' mayhem, felony and
freholdable as above, be to be the only cause of except-
ion in their charter; yet it has been held that in actions for
the recovery of the possesion of a term, without claim-
ting title to the freehold, they shall have no privilege, be-
cause the freehold may come in question. Cr. Cas. 87.
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
chattel 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 can-
not be allowed. As in the following cafes:
A bill was brought yetting 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 prevent
the bill and equity, excepting the

Where any fellow, &c. desire for reward, the period
for whom it is given made incapable, &c. 31 El. c. 6.
spreading over the term, it is said that the
universities and royal colleges excepted out of the
flow of charitable uses, 43 El. c. 4. f. 3.
The pretention of benefits belonging to papists given
to the two universitie, 13 F. c. 5. f. 18. 19.
Universities may file a bill in equity to discover truths,
12 Ann. 2. c. 14. f. 4.

Pleading quota impedit, a rule may be made for examining
patron and clerk, 12 Ann. 2. c. 14. f. 5.
Incumbents of united churches to be graduates, 17
Car. 2. c. 3. f. 6.

Prefeteue to reside, 1 W. & M. c. 26. f. 6
Colleges refusing to take the oath, King may nom-
inate persons to succeed, 1 Geo. 1. c. 10. f. 12.
Mandamus lies to admit King's nominee, 1 Geo. 1.
c. 13. f. 13.
Vice-chancellor of Cambridge may act as judge of
the county without the landed qualification, 7 Geo. 2.
c. 10.
The universities and royal colleges excepted out of the
mortmain act, 9 Geo. 2. c. 35. f. 4.
Colleges poffefl of more advowsons than a moiety of
the fellows, not to purchase more, 9 Geo. 2. c. 39.
f. 5.
Players not to act within five miles of the universities,
10 Geo. 2. c. 10.
Distillers selling wine in Cambridge, to take licences,
10 Geo. 2. c. 19. f. 3.
Grants made by papits of ecclesiastical livings vested
in the universities, void, 11 Geo. 2. c. 17. f. 5.
What shall be reguHed in the universities without
their licence, 17 Geo. 2. c. 40. f. 11.
Union of two colleges in the university of St. Andrews,
2 Geo. 2. c. 32.


V, A Saxon word denoting a wicked or unjust
law, in which fene the word is read in Leg. Hen. 1. cap.
34. 84.

Unlawful assembly, (Uliicata congregatia) Is the meet-
ing of three or more persons together, by force, to com-
mence some unlawful act, and abiding together, though not
endeavouring the execution of it, as to assume or bear
any person, to enter into his house or land, &c. W. & M.
19. And by the statute of 16 Car. 2. cap. 4. See

Quittes put. Always ready, Is a plea whereby a man
professes himself always ready to do or perform that
which the demandant requires. For example, A woman
sues the tenant for her dower, and he coming in at the
day, offers to ater that he was always ready, and is to
perform it. In this cafe, except the demandant will
aver the contrary, he shall recover no damages. When
this plea will serve to avoid charges, and when not, see
Kitchen, fol. 243. See Unrogate put.

c. 12.

Ciowrance (Faciis) Is a want of an incumbent upon
a benefice, and this is double, either in law, as when a
man hath more benefices incompatible, or in deed, as
when the incumbent is dead, or actually deprived. Bre.
tur. Qua. impedit, 51. See Clowrance.

Void and voidable. In the law some things are abso-
lutely void, and others are voidable only. A thing is
void which was done against law at the very time of
doing it, and if not done by such an act, but a thing is
only voidable which is done by a person who
ought not to have done it, but who evertheless

does not avoid it himself after it is done; though it may by
some act in law be made void by his heir, &c. 2 Lil.
Abstr. 207.

Donor of a simne course and interest are void. Bre. Oh.
pl. 26. This however, with regard to the infant, must be
understood with some restriction; for if an infant gives
a bond without a penalty for necessaries, it is good; and
9 C.
the reason why it is void, if, with a penalty, feem to be
that the law gives validity to every act of the infant's
which may be for his benefit; but it cannot be pro-
ounced to be for his benefit to enter into a penalty. Noy 85.
Sec. 579. 1 Rep. 172, a. 1 Rep. Adr. 729. 1
Lec. 82. Rev. v. Reevv.
Likewise the bonds of perfons non compo mentis, after of-
fice found, are absolutely void. 4 Rep. 178. Beverin's case.
It is said the reason why the bond of an infant or per-
son non compo is void, is, because the law has ap-
pointed nothing to be done to avoid it; and the only reason why
the bond itself is void, and non compo, is, that the cause of
nullity is extrinsic, and does not appear on the face of
the deed. 2 Salt. 675. Thompson v. Leach.
And in general all bonds which are given for a pur-
pose voidum in se, as to kill or rob another, are void. Like-
wise bonds given for the performance of a malice prohi-
bitum is for maintenance. And bonds to oblige perfons
to neglect their duty to the King and kingdom, are abso-
lutely void. 5 Dec. Adr. 338.
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
commences, and that is an elder title correurring with it; and
if the law should make it otherwise than void, the
law would make it a feu d'eta, 3 Salt. 620.
If a bishop grant administration, and there be nota-
bilitas, such administration is absolutely void, as
well as to the goods within his own diocefe as elsewhere,
because he hath in such cafe no jurisdiction whatever. 5
So likewise a judgment, given by persons who have no
good commiflion for that purpose, is void. 3 Le3. 231.
Void things are good to fome purpofes. As if liable
for 20 years take a leafe for 10 years, to begin prefently,
upon condition that if a certain thing be not done the
leafe shall be void; in that cafe, though the fecound leafe
be void on the breach of the condition, yet the furrender
remains good. Em's Law 62.
So likewise if a fefciff in be made, to be void on the
non-performance of a certain condition, yet after the fef-
for's entry for the condition broken, the fefciff shall have
an action for a fefciff done by the fefciff before. Id. ibid.
Alfo if tenant at will grants over his eflate, though
the grant be void, yet it determines his will. Arg. Hard.
47. James 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 Anderson, Cro. Eliz. 445. Up-
ton v. Buftif.
So likewise a fefciff upon maintenance or champery
is not void against the fefciff but against him that hath
Buftif.
Alfo where a feme covent or infant are bound in an
obligation with others, though the bond is void as to the
feme covent or infant, yet it is good as to the other,
who shall be fued alone, and the writ fhall not abate.
Pigott.
In equity the conten of the heir makes good a void
defe. Chanc. Cafes 109. Ld. Caroeby v. Mid-
dleton
So likewise a devisive void by misnomer of the corpora-
tion was deemed to be a good appointment of a charita-
tble use, within the 43 Eliz. 3. Chan. Cafes 267. Anoi.
If a leafe be made by the husband of the wife's land,
and the husband dies, the leafe is not void, but voidable
the moft part, as to the widow. 5 Baffif. 272. cites Pissol.
Likewise if tenant in tail make a future leafe for
years, which by poffibility may be to commence during the
life of tenant in tail, it is not void, but voidable as to the
So if an infant makes a fefciff or a leafe, and deli-
vers it with his hand, it is voidable only. 2 Brew. 248.
Plomer v. Hicham.
It is said likewise, that a deed of Exchange entered in-
to by an infant, or one non jacent mens, is not void,
but may be avoided by the infant when arrived at age, or
by the heir of him who is non jacent mens. 22 Vin. 281.
Alfo an infant's bond of submiilion to an arbitration
An infant's contract of marriage likewise is only void,
able to be avoided. 3 Lord v. Ward, Clarendon.
Coig direx. (Feritato direx). 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; and if he be unconcerned
his testimony is allowed, otherwise not. Coe, edit.
1727.
Columbus, is the first word of a clause in the King's
8. and 3 Rich. 2. cap. 16. Of protections fome are
cum claritate volumens, and of thefe there are four kinds,
viz. 1. Qua profeffionariis. 2. Qua maritatiis. 3. Qua
institutis nobilium exiftit. 4. When any one fent to the
King's service beyond fea in war, is imprisoned. Ca. un
Lit. fed. 199.
Columtari, As applied to a deed, is where any con-
veyance is made without a confideration, either of
money or value. If this remains void, and non compo,
exempts, to a man's right heirs, &c. are deemed volun-
tary in equity, and the perfons claiming under them
Fraud.
Columtas, Is, when the tenant holds at the will of
the leffer, or if there is in two manners; one, when
he makes a leafe to a man of lands, to hold at my
will, then I may put him out at my pleasure; but if he
forfees the ground, and I put him out, then he shall have
his corn with egrets and regrefs till it be ripe to cut, and
carry it out of the ground. And fuch tenant at will is not
bound to fullain and repair the houfe, as tenant for
years is. But if he make wilful waste, the leffer shall
have again fair him an action of trefpafs. The other te-
nant at will of the lord is, by copy of court-roll, ac-
cording to the cullom of the manor; and fuch a tenant may
murther the land into the hands of the lord, according
to the cullom, to the ufe of another for life, in fee, or in
fee tail, and then he shall take the land of the lord, or
his fward, by copy, and fhall make fine to the lord.
Coe, edit. 1777.
Curtan, A vow or promife, used by Flate, for muf-
ties; to dies votumus is the wedding-day. Flate, lib. 4,
cap. 2, par. 16. Si dominarius ad eam voto convolva-
ext.
Clouchir, (Yocanum,) Signifies when the tenant calls
another into the court, that is bound to him warrant
New Book of Entries, verb. Voucher; Voucher de Garran-
ny. Brit. cap. 75. And that is either to defend the
right against the demandant, or to yield him other,
either his land, or the goods therein, or to hold the
right; which the Common law doth not, except it be specially 
concieved. The works whereby the voucher is called, is a summonem ad warrantandum.
And if the fheriff return upon that writ, that the party
hath nothing, whereby he may be fumoned, then goes
another writ called Sequitur ab fac periculis. See
Lamb.
Thus for and alfo dum, enough, and the voucher, when the tenant being impealed in a particular jurisdiction, as in London, or the like, voucher one to warranty, and prayed, that he may be furnished with the vouchers annexed to that court, which might more aptly be called a voucher of a foreigner De forinfectis ad warrantandum, Co. On Lit. fol. 101. also Co. Rep. 2. f. 50. Sir Hugh Cholmley's cafe, Voucher is also used in the statute 19 Car. 2. cap. 1. for a leger or book of account wherein are registred the allowances or warrants for the accountant's discharge. Cowell, edit. 1727.

The voucher before justice in Eyre shall be summoned for the third or fourth, St. Mary, 52 H. 3. c. 36. Counter-plea given in mortdomaine, that the tenant was the first that entered, St. Wulfam. 1. Ed. 3. cap. 40.

Not to be out of the line, Ibid.

In a writ of right, that the voucher, &c. had no seignior, since the time of whole seignior the demanndant count, Ibid.

Proceedings in foreign voucher in London, 6 Ed. 3. c. 12. 9 Ed. 1.

The counter-plea given by flat, Wulfam. 1. cap. 40.

Shall be received though the voucher be present, St. de Feo. 20 Ed. 1. f. 11. 12.

Averment that the voucher is dead, or that there is no person, shall be received, 14 Ed. 3. f. 11. 12. See Ibid. 12.

Ufes, Vixem sun habere. Is a phrase used by Bratton, lib. 3. c. 34. par. 3. and by Fleta, lib. 1. cap. 34. par. 9. and in cap. 38. par. 21. and it signifies an infamous person, one who is not admitted to be a witness Cowell, edir. 1727.

Upholders, Shall not make beds and other wares dejectly, 11 Hen. 3. c. 19. 5 Ed. 7. cap. 23.

Beds stuffed with flocks may be carried on board ships for necessary use, 12 Car. 2. c. 3. feft. 11.

Uplands, (Uplands,) High ground, or as some call it terra firma, contrary to moorith, marsh or low ground, Gutthub.

Ufa. Is the river Ufa. Tune in refum ad Undfor- dum, tune furium in Ufa ad Watling street. Du Conge. This river was called Ufa from the goddes of that name: For it was customary amongst the pagans to dedicate hills, woods, rivers, &c. to such goddes, and to call them by the same names. And the Britains were so great that reverence for Ceres and Proserpina, who was also Ufa, did for that reason name this river Ufa; and the being the goddes of the night, from thence they computed days by nights, and years by months: Of which we have no remauns, as seven nights, fortinight, U. Cowell, edit. 1727.

Ufe. See Preemption.

Ufe. (Ufus,) 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, Wulf. Symbol. lib. 1. feft. 48. 49. 57. 54. 52. Every deed confits of two principal parts, namely the pre- miffes, and the confquences; the premiffes is the former part thereof, being all that which precedeth the habendum or limitation of the flate, which are the persons conf tracting, and the things contracted. The confuent is that which follows the premiffes, and that is the habendum, 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 use, which is to express in the said habendum to or for what use and benefit he shall have the same estate; and of the limitation of such use, many pretences are let down in the fame, Wulf. Symbol. part 1. lib. 3. feft. 328. & 327. These uses were invented upon the statute of Wulfam. 3. Sina enquire terrarum, before which statute no such uses were known. Perkins De- vices 528. And because in time many deceits were in- vented, by setting the possession in one man, and the use in another; to avoid which, and divers other mischief and inconveniences, was the statute 27 H. 8. cap. 10. provided, which gave the use and possession together.

So Co. lib. 3. Cloudlegh's cafe, edit. 1727.

An use at Common law was an equitable right which he referred, who conveyed a legal estate to another, upon truth and confidence that the person to whom he so conveyed it had no other design, but to enjoy 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. Cloudlegh's cafe.

The feeoffe therefore, or terretenant, (that is, the person to whom the legal estate was conveyed,) had the hold- hold or fee prevailing in him; and he could have conveyed the legal estate to him (that is, the cefsey gue ufe) had neither jus re, nor ad rem, for it he had en- tered upon the land without the conent of the feeoffe, 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 fulpems in chancery. 5 Bac. Abr. 342.

But this equitable right extended to all persons who claimed in privity under the feeoffe, that is, who came into the same estate which the feeoffe had to the use, and by contract or agreement; for a devisee might hold by the legal estate, but not by contract or agreement, and therefore claiming not by or from the feeoffe, he conseqently did not claim the estate as it was subject to the use, but he claimed an estate above that free from and discharged of the uses; and it would in a manner have defaced his claim, to have his estate said to be come into the use of an ufe, when he did not claim the estate which was charged with the use: For confidence in the per. 1 was requisite, as well as privity of estate. 5 Bac. Abr. 342.

Confidence in the peron, was either express or implied, as if a feeoffe to an ufe had, for good confidence, enjoined his estate upon an ufe for a particular use, but not by contract or agreement, and therefore claiming not by or from the feeoffe, he conseqently did not claim the estate as it was subject to the use, but he claimed an estate above that free from and discharged of the uses; and it would in a manner have defaced his claim, to have his estate said to be come into the use of an ufe, when he did not claim the estate which was charged with the use: For confidence in the person 1 was requisite, as well as privity of estate. 5 Bac. Abr. 342.

From hence it may be allowed, that to every use at Common law there were two insepable incidens; a privity in estate, and a confidence in the person; and where either of these failed, the use was suspended or de- froyed. 5 Bac. Abr. 342.

The original use was from a title under the Civil law, which allows of an usufructuary possession, distinct from the subsistence 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 mortdomaine, and after several evasions by purcashing lands of their own use, the use was destroyed; for the person enfeoffed not knowing that there was any ufe, no truft could be repose in him, to let the cefsey gue ufe take the profits; but if he had noticce, a truft might well be laid to be repose in him, because he took the land, knowingly, charged with the ufe. So also, if the feoffment had been made without con- fideration, tho' the person enfeoffed had no notice of the ufe, yet he would neverthelefs have had feoffed to the ufe, for the law in that cafe would have implied notice of the ufe, and consequently the trufit would have re- mained. 5 Bac. Abr. 342.

From hence it may be allowed, that to every use at Common law there were two insepable incidens; a privity in estate, and a confidence in the person; and where either of these failed, the use was suspended or de- froyed. 5 Bac. Abr. 342.
USE

1. Of the power of escheat que ufe at Common law, and by the Statute 1 K. 3. c. 1.

It has been said in the definition of an ufe, that escheat que ufe had neither jure in re, nor ad rem; if for the feoffee broke his truft, he had no remedy against him but by fupersedeas in chancery. This rule fo far went, that if it fo far commenced in the time of Ed. 3, but it was always against the feoffee in truft himfelf, and was never allowed againft his heir till H. 6. And in this point was the law changed by Fortescue Chief Justice, Keir. 42. b. 5 Bac. Abr. 345.

So that if the feoffee had died, his heir was feized to hold the lands in the time as his own ufe, as the law was taken to the time of Hen. 4; till at length the fupersedeas was granted both againft the heir, and the feoffee of the feoffee, about the time above mentioned, or according to fome later. Id. ibid. and 48 b

But this at Common law escheat que ufe had no power over the land, yet might alien the ufe, becaufe 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, if escheat que ufe had entered and made fupersedeas, and fupersedeas in chancery, it did not have good to pafs the efteat to the feoffee, becaufe escheat que ufe had not the freehold in him, and fo could not pafs it to another; but by his entry he was a defifter: yet in this cafe, if the feoffee of the escheat que ufe had re-entered upon the purchase, the feoffees would not have had the lands to their own ufe, and they would not have fowed feud in the ufe of the escheat que ufe, becaufe he had tranfferred the ufe to another. Plowd. 352. b.

If escheat que ufe makes a leafe for years, rendering rent, the reversion is void, unlefs it be by deed, for the rendering rent to a man is an acknowledgment of the holding the lands from him; here the lands are not held by escheat que ufe, but by the feoffees who have the reversion. But if the reversion be by deed, the feoffees fhall not have the rent referved, but escheat que ufe fhall have it. Br. F. to ufe 338. f. 23. 339. f. 26.

If escheat que ufe make feoffment, with a letter of attorney given livery according: Q. Whether the feoffment was good; or whether it was not a diftiffin. Br. F. to ufe 339. f. 28.

But by the statute of 1 R. 3. c. 1. a power was annexed to an ufe, that escheat que ufe fhould alien the lands.

The reafon of that statute was, becaufe escheat que ufe in poiffleffion often aliened the lands, and then the feoffees entered, which caufe a great deal of vexation and chancery suits; and therefore the statute gave escheat que ufe an immediate power of alienation, without the concurrence of the feoffees; which tends more particularly to examine the power of escheat que ufe. Gil. Law of ufe 37.

The statute of 1 R. 3. c. 1. enacts that, "Every effeatt, feoffment, gift, release, grant, leaves, and conformation of lands, tenements, rents, services, or hereditaments, made or had, or hereafter to be made or had by any person or persons, being of full age, or whole mind, at large, and not in danger of lunacy, or per- sons; and all recoveries and executions had or made, fhall be good and efficacious to him to whom it is made, had or given, and to all other to his ufe, againft the feller, feoffor, donor, or grantor thereof, and againft the fellers feoffees, donors, and grantors, and againft all others that claim the fame only as heir or heirs to the fame fellers, feoffors, donors, or grantors, and every of them, and againft all others having or claiming any title or interest in the fame, only to the ufe of the fame feller, feoffor, donor, or grantor thereof, and according to their faid heirs, that at the time of the bargain, sale, conveyance, gift, or grant made: Saving to every person or perfon, right, title, action, or intereft, by reason of any gift in tail thereof made, as they ought to have had, if this act had not been made."

And all recoveries. By this word [all] feint recoveries, as well as recoveries upon good title, are comprehended. But they are good only againft the grantors, grantors, and their heirs claiming only as heirs to the grantors, fo that they are not againft him that claims as heir to the grantor and his feme in tail per femain doni. Arg. Pl. c. 4. a. 2. Mich. 6 Eliz. in Maxwell's cafe.

Recoveries. If a man recovers by erroneous judgment, and makes feoffment to his ufe, and the other things writ of errour, and reverses the judgment, he may enter without fite faciat against the feoffees; for it is a recover-y to which it fhall bind him and his heirs and feoffees, by the statute, 1 R. 3. Br. Poftament in ufe 337. fett. 3.

Feoffees, donors, or grantors. Yet if escheat que ufe grants a rent-charge, and the feoffees are difafflied, the grant fhall be good againft the difafflied; and he does not claim only by the escheat que ufe. Arg. 2 Lr. 153. pl. 183. In case of Cordis's executors v. Ciffon.

Only to the ufs. This statute did not take away the power of feoffees; for they may yet make feoffments; but the statute 1 R. 3. c. 1. does not give the escheat que ufe, who may now make feoffments likewise. Gilb. 393. in case of Lord Sheffield v. Ratcliffe.

Saving to every perfon, &c. It was agreed per Cur. that thofe words are taken for tenant in tail in poiffleffion, and tenant in ufe in tail; for escheat que ufe in tail has no right or intereft. Br. Poftament in ufe 339. b. 40.

Here it is obvious, that there is a difference between a feoffment according to this statute and a feoffment at Common law; in cafe of foftament at Common law, the feoffor ought to be feifed of the lands at the time of the fefament; but if a feoffment be according to the statute of 1 R. 3. in fuch cafe the feoffor did not need to be in poiffleffion: Fefaments at the Common law give both efates and rights; but feoffments by the statute of R. 3. give the efates, but not the rights. In cafe of feoffment at Common law, the feoffor is in the per, viz. by the feoffor; but in cafe of efaments by the statute of R. 3. the feoffees are in the poiffleffion, viz. by the ftrid feoffees. Gilb. 318. Lord Sheffield v. Ratcliffe.

Another difference likewife is taken in Plowden between the fefament of the feoffees and of escheat que ufe; for if the escheat que ufe for life in cafe makes a feoffment in fee, either with or without confideration, all the old ufses were difcontinued, and the ancient efate which the feoffor had, is gone, and a new efate created out of thefe new ufses raised by the fefament; for when escheat que ufe makes a feoffment in fee, which by this statute he might lawfully do, he paffed an ufe in fee fimple to the feoffor; which being a new ufe to the feoffor, all the old ufses were difcontinued, and consequently the eflate of the feoffor must be altered; for were it the ancient eflate, it were still subjedt, by the former and elder limi-tation of ufses, to the old ufses; therefore the feoffees, by the construction, a new eflate to the new ufses; but if the feoffees themselves had made a feoffment without confideration, the feoffees had flood feifed to the old ufses, for hermetas no ufe nor new eflate. Gilb. Law of ufe 180. cit. Pl. C. 350.

By the statute escheat que 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 eflate in being; because the intent of the statute was only to give the power to transfer his title, and not any other remedy to regain and revest it; and unlefs he has the ufe he cannot pafs the ufe, much lefs poiffleffion to another. Gilb. Law of ufe 27. Plowd. 351.

But if the feoffor to the ufe in fee be difafflied, and escheat que ufe releases to the defifter, this extinguishes the ufe, and by the statute bars the entry of the feoffor. Plowd. 351.
Also where feoffees to an ufe are difcretion, and after the
defcendant enfefts e侨y que ufe, who enfefts a stranger: this
is good, and shall bind the feoffees, for the feoff-
ment is good to put the poffeffion, and right of the
ufe, which he had in him; and the feoffees cannot
en-
fy a reversion in the land, which is very, by
his

The statute likewise is to be understood of e侨y que ufe
that has an ufe in effer, in opposition to him that has
only a reversion or remainder of an ufe. If a fee
is fhifted to be made to the ufe of A., for life, remainder to B. in
free, may be taken in fee, because feoffees claim the whole
eflate for the ufe of A. during his life, and he has the
whole advantage of it; and the statute, that gives
the preferrent pofterity of the ufe a power of alienation,
has provided an immediate remedy for the remainder

But if the tenant for life be an ufe aliens in fee, and
dies, the feoffees may enter on the alience; for by
the words of the statute, the alienation is good against e侨y
que ufe and his heirs, and perfon's claiming only to his
ufe: So when feoffees claim the ufe of the remainder
man, the feoffment of tenant for life, according to the
authority given by the flature, is no longer valid to be
the feoffees of the entry; for their right is by the Com-
mmon law. Gil. Law of Ufe 25. Plowd. 348. Dala-
mer v. Barrard's cafe, the point refolv'd.

If there be an efcoffment in fee to the ufe of A. for life,
the remainder to B. in fee, B. has no power of alienation
by any alienation out of the conterminous pofterity of
life, becaufe the poffeffion is, as is aflid, to the ufe of A.
only, during his life, and the remainder man has noth-
ing to do with the poftcffion; and if the remainder man
should enter on the poftcffion and make a feoffment, either
the ufe of tenant for life would be destroyed, or the feoff-
ment must re-enter and create another entry for that
ufe to themselves, without being fubjeft to dower; for by the
Common
law, every particular eftate is derived out of the fee
simple by the agreement of the parties in interell; but
there are no parties to fuch agreement, and the flature
has not altered the law in this cafe. Gil. Law of Ufe 29.
Plowd. 350. 1 Ch. 128. b.

But if there be a feoffment for life, remainder in fee, he
in remainder may take a leave for years, or grant a rent-
charge to begin after the death of tenant for life; for he
cannot enter and take the poftcffion out of the feoffee;
but it is an execanny contract on which the flature op-
rates after the death of tenant for life. Gil. Law of
Ufe 30. Plowd. 358. b.

So likewise if a leave for life is made to the ufe of A.
and afterwards the reversion is granted to another for life
to the ufe of B. and attornment is had, and afterward
the reversion is granted to another for the ufe of G. in
free
life, he may enter and take the entry; for he is had in this cafe A. must, because
he is not tenant to the praeclj to that would be no bar
at Common law, and this is not helped by any flature:

Vol. II. No. 133.

For though a recovery here be expressly mentioned, and
fo binds the party himself, yet the right of the alience
in tal is faved. Bro. F. et al. Ufe 337. f. 2. 338. f. 211

If tenant in tail of a ufe levy a fine, or fail a reco-
very, this is an expiable bar of the effair, though the
ufe is diuided; and though the landlord may make a legal re-
nant to the praeclj; for as the fine and recovery is
paffed in a legal effair at Common law, so it passes the
toal of a ufe in the court of equity. 1 Ch. Cof. 49.
210. 2 Ch. Cof. 93. 63.

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210. 2 Ch. Cof. 93. 63.
tick, be from henceforth clearly doomed and adjudged to be in him or them, that have or hereafter shall have any fee undivided of the truth, after such quality, manner, form, and condition as they had before in or to the use, confidence, or trust that was in them."

Where any perfon or persons The word 'perfon' excludes all corporations. Lord Bacon's Reading on the Statute of Use 334, 335.

Soe thereto. This word failed excludes chartels and rights. It likewise excludes contingent uses, because the fein can not be put to a fee-simple of an use; and when that is limited, the fein of the seffee is spent. Lord Bacon's Reading on the Statute of Use 335.

or other heralds. This word 'heralds' is to be understood of the heralds wherein inheritance is in estate; for if I grant a rent-charge de novo for life to an use, this is good enough; yet there is no inheritance in being of this rent. It likewise excludes annuities and uses themselves, so that an use can not be to an use. Lord Bacon's Reading on the Statute of Use 335.

The statute having spoken before of uses in fee-simple, in tail, for life or years, addeth, or otherwise (in remainder or reverter) whereby it is manifest, that the first words are to be understood of uses in fee-possession.

Lord Bacon's Reading on the Statute of Use 337.

In lawful fee, estate and possession. The words (lawful fee, estate and possession) intended not a possession in law only, but a sein in tail; not a title to enter into the land, but an actual estate. Lord Bacon's Reading on the Statute of Use 338.

Sent 2. Where divers persons shall be jointly feied to the use or trust of any of them, those which shall have such use or trust, shall be adjudged to have only such estate, possession, and fein of lands, &c., as they had in the use or trust, saving to all persons other than those which be seised to any use or trust, all right, Use."

Sent. 3. "Alla faving to all those persons which shall be seised to any use or trust, all such former rights as they might have to their own proper use."

Upon this faving clause the following cafe has been determined. The husband being seised in fee made a lease to O, and S, but it was in secret confidence for the predecessor of his wife; and afterwards be made a feoffment to O, and others of the same land to other uses. It was desired by the advice of Wayr, Anderson and Mon- bod, that the term was not extinguished by feoffment, by reason of the possessor; and because O had this lease to his own use, it is not extinguished by the feoffment which he took to the use of another. Med. 136. pl. 245. Cheneys case. 109. pl. 9. S. C. says that he had no seisin, generally in trust to the use of the wife, and education of their sons and daughters, notwithstanding that divers covenants were therein contained, and a rent was reserved; and says that the feoffment made afterwards was to the use of the husband himself, and his legal wife for their lives, with remainder over; and that the same was held accordingly.

Sent. 4. 5. "Where any be seised to any use or intent that another shall have a yearly rent out of the same lands, covin the use of the rent shall be deemed in the possession thereof of like estate as he or she had that use."

A man, in consideration of natural love and affection, covenanted to land seised to the use of himself for life, the remainder to B, his fon in tail, and to the intent that B, should have a rent implying out of the lands, during the life of A. the fon dies and his executors brought debt to the area of the rent. It was then decided, that by these words of the statute B, in this case had a good rent, as well upon covenant as by a feoffment, or bargain and sale. Sir W. J's. 175. Recove v. Goodin.

The design of this law was utterly to abolish and defeat the usurper's way of conveyance to uses; and the means they took to do it was to make the possession fall in with the use in the same manner as the use was limited; and where they were all freeholds, it was thought they would be then subject to the rules of Common law; but the method has not answered the legislature's intent: for it has introduced several sorts of conveyances quite opposite to the rules of Common law; for now wherever any use is raised, the statute gives e f i t a q u i e f u e the possession; to that it is only necessary to form an use, and the possession falls without any livery or record, and without the party being either the wife's husband or the husband's tenant; and now the use (by the name of trust, which were the same before the statute) remains separately in some persons, and the possession separately in others, as it did before the statute, and are not brought together but by a decree in Chancery, or the voluntary conveyance of the husband to his wife to create trust. So that the principal use of the statute of 27 H. 8. effectually upon fines levied to use, is not to bring together a possession and use, but to introduce a general form of conveyance, by which the covenors of the fine, who are as donors in the case, may execute their intents and purposes at pleasure, either by transferring their estates to other persons, by enlarging, diminishing, altering them, and amalgamating themselves, at their pleasure, without observing that rigor and strictness of law for the possession of the conusors, as was requisite before the statute. Tauth 57. Dixon v. Harrijen.

In this statute, there are, three ways of creating an use or a trust which still remains as at Common law, and is a creation of the courts of Equity, and subject only to their control and direction. First, where a man forfeits for raising a term of years, and limits it in trust for A. For this the statute cannot execute, the termor not being forfeited. 210. Where lands are limited to the use of A. in trust, to permit B. to receive the rents and profits; for the statute can only execute the first use. 318. Where lands are limited to trustees to receive and pay over the rents and profits to such and such persons; for here the lands must remain in them to answer their purposes; and these points were agreed to. 1 Abr. Eqw. Conusor & Trustee. 77.

But before we consider the particular alterations introduced in the mode of conveying property by the 27 H. 8. it may be necessary to premise in general, that, since the statute, the limitation of uses is in many cases governed by the rules of law. As if a seoffment is made to the use of J, S, and his heirs male and female, with remainder over; this does not pass an estate-tail, but a fee-simple, since the statute; for since the statute has brought uses into possession, they ought to be governed by the rules of estates in possession, as to the words that are essential to creating such uses. Nor is there any statute in this respect to the exception. Where there is no such estate at Common law so far as to allow an estate in being, without words requisite to create it; and here nobody is limited from whence the heirs of the tail may proceed. Alto no fee simple can be created in uses, without the word heir, since the statute, for the same reason. Gil. Law of Uses 75. 1 Rob. 87, 6.

So if a man makes a seoffment to the use of himself for years, the remainder to B, in tail, remainder to his own right heirs, and after B. dies without issue, leaving the seoffor, the remainder to his right heirs is void, because it being contingent, there is no estate of freedom to support it, for there is no tenant to the privity, and the other having a perpetual tenant to the privity was an inconvenience the statute expressly designed to redress, and consequently to this rule the statute has submitted all uses. 2 Rob. Abr. 791. Gil. Law of Uses 76.

So of a man who makes a seoffment to the use of A. for life, the remainder to his first son in tail, the remainder to B. in fee; if A. dies, his wife being previenuent, and a fon is afterwards born, he shall take nothing; for if the remainder does not vest at the determination of the particular estate, it shall never vest; for the remainder to the husband to his son in tail, the statute does not direct that nature and being of estates that were fetted at Common law, and a remainder evi termini supposes a particular
But see 3 Jac. 2. c. 16, for preferring con-
tingent remainders to after-born children.

So if a man makes a feoffment in fee to the use of A., his son for life, and afterwards to the use of every per-
son that shall be heir to one of the two estates, 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, be- cause it creates a perpetuity; but it is fixed in this case, as if Chancery (since there is supposed a good confide-
ration) had been executed a fee in A. according to the in-

Gil. Law of Viti. 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 greater 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-fimplie 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 franchise to take advantage of a condition: Yet the necessities of commerce and family setlements induced the Common law to pass by this rule, and the statute has executed the pro-
fession in the same manner and form as the party had the right of to have had a fee for life. If the person to whom the estate was limited on a life in fee, 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 Viti. 73. See 5 Bat. Abr. and 22

Vit. tit. Uit.

After be action. Is the purifying or bringing an ac-
tion, which in what place and county it ought to be, see Br. tit. 64. &c.

After (Offarius), from the French Hafuir, 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 of Exchequer, and all the other jour-
eries, sheriff, and all other accountants, at the pleasure of the court. There are also officers in the King's house, as of the privy chamber. See Black-thob.

Abutation. (Upercatis.) The enjoying a thing by connuissance of time, or receiving the profits, long po-
excepted by the law of nature.

Abutment. (Uforfuthaurius.) One that hath the use, and reaps the profit of any thing. Cowell, edit. 1727.

Usurious contract. Is any bargain or contract, whereby any man is obliged to pay more interest for money the use of, than is allowed by law.

Abutation. (Upercatis) Is the using that which is an-
other's; an interuption, or disturbing a man in his right and possestion, &c. And usurpations in the civil and can-
non law are called intrusions; and such intruders hav-
ing not right shall submit, or be excommunicated and deprived, &c. Bonnet's Conspirit. Gib. Codex 817. The usurpation of a church benefit is, when one that hath not right, pretenteth to the church, and his clerk is admitted and instituted into it, and hath quiet possesion six months after institution, before a quare im-
peid brought: It must commence upon a pretentation, not collation; because by a collation the estate is not lost, but the right pretender may bring his writ at any time, to remove the usurper. 1 Inf. 227. 6 Rep. 30. And by usurpation, the fee of an advowson may be gained, as well as the avoidance upon which the usurpation is made: And the true pretender cannot remove the incumbent to regate and edging of a right to the benefic, which he is driven to for recovery of the inher-
ance. 6 Rep. 49. It has been formerly held, that upon an usurpation the usurper gains a fee-fimple in the ad-
vowson; in like manner as he who enters into land during a vacation, and claims the same as his inheritance, by wrong of the true owner, gains the fee of the land. But the usurper will not take away the entry of the true successer; nor re-
shall the usurper on a vacancy take away his right of

presemtation when the church becomes void. 2 Ca. Inf. 360. 17 Ed. 3. 37.

At Common law the patron in fee was put out of possesion by an usurpation, and to recover the advowson it fell by a writ of right; but he hath no remedy for the pretentation or the usurpation itself, unless he brings his writ of right of advowson, and re continue the advowson: If the patron had the advow-
son in tail, or for life, this turn and also his whole ad-
vowson was gone. 3 Salt. 383. An usurpation upon a lease for years, gains the fee-fimple, and puts the true patron in possession of the advowson; but another that was in

he in reversion after the determination of the lease for years, may have a quare impedit when the church is void, or may precent; and if his clerk is instituted and in-
ducted, then is he 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. Hat. 66. 3 Salt. 389. Upon the statute a Eliza. If an usurpation be on a bishop, it shall bind him; but his successor may pre-
ent to the next avoidance, or bring a quare impedit, al-
though he is out of possesion: All usurpations shall bind the bishop who suffereth them, not their successor. 1 Lesn. 80. 2 Gae. 67. No one can usurp but the king; for he shall be obliged to bring a quare impedit; tho' it

will not so 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 jointtenant, &c. cannot usurp

upon a lease. And there are two patrons of churches united, if one pretends in the right of advowson, it is an usurpation; for they are not as copartners, who are privy in blood. Dyer 259. 17 Ed. 3. If one pretends to a church in time of war, the pretention shall not put the rightful patron out of possesion: And a preten-

tion which is void in law, as in case of simony, or to a

church that is full, &c. makes no usurpation. 2 Rep.

93. Wood's Inf. 160. Also by a late statute, no usur-

pation on any avoidance, shall displace the estate or inteli of any person intitled to an advowson; or hinder him to pretend upon the next avoidance, or to maintain its quare impedit to recover possesion, Cap. 7. Ann. cap. 18. This statute hath quite altered the law concerning usurpations of churches. Mallor, 3 impd. 146.

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
courante against the usurper. Jau. See Duc. Dau.

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 ad-

vantage of it, or the lender suffered any prejudice for the work of it, or whether it be repaid on the appointed time or not: And if the usurer were to remit the advantages taken by a lender against a borrower, came under the notion of usury, whether there were any con-

tract in relation thereto, or not; as where one in posses-

sion of land, made over to him for the security of a cer-
tain debt, retains his possesion 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 who-

ever was guilty of it, was liable to be punished by the confection of his body; and that if after death any one was found to have been an usurer while living, all his chattels were forfeited to the King, and his lands escheated to the lord of the fee. Hawk. Ps. Coursn 245. But per Hale Chief Jusfices, Jewish usury, being 45 per Cent. and more, was prohibited at Common law, but not at Common law. Hawk. P. C. 420.

Alfo it feemeth to have been the opinion of the makers of some acts of parliament, as 5 Ed. 6. cap. 20. 13

Eliza. cap. 8. f. 5. and 21 Jac. 1. cap. 17. f. 5. that all kinds of usury are contrary to a good confidence. 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 usury for the forbearance of
of money, because that all such contracts were thought to be unlawful, and consequently void. Ibid. 

But it is deemed to be generally agreed at this day, that the taking of reasonable interest for the use of money is in itself lawful, and consequently that at a covenant or promise to pay it, in consideration of the forbearance of a debt, will maintain an action; 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 phrases in the Mosaic law, which are generally urged against the lawfulness of all usury, if fully considered, prove the unlawfulness of such as it, for if all usury were against the moral law, why should it not be as much so in respect of foreigners of whom the Jews were expressly allowed to take it, as in respect of those of the same nation, of whom alone they were forbidden to receive it? From whence it seems clearly to follow, that the prohibition of it to that people was merely political, and consequently does not extend to any other nation. Hawke, P. C. 245. 

By the 37 H. 8. c. 9. and the 13 Eliz. c. 8. The rate of interest is not to exceed 100. in the 100. 

By that 21 Jac. 2. cap. 13. c. 2. None shall take directly or indirectly, for the loan of money, or other commodities, above the rate of 8l. for 100. for one whole year; on pain to forfeit the treble value of the money, or other things so lent. 

S. 27. 5. This law shall not be construed to allow the practice of usury in point of religion or conscience. 

By that 12 Car. 2. cap. 13. c. 2. None shall take directly or indirectly, for the loan of money, or other commodities, above the value of 6l. for the forbearance of 100. for one year, and so after that rate, and all bonds, contracts, &c. whereupon more shall be reserved, shall be void. They that receive more, shall forfeit the treble value of the money or other things so lent. Hawke, P. C. 246. 

S. 5. That no person upon any contract, which shall be made after the 29th of September 1714, shall take for loan of any money, wares, &c. above the value of 5l. for the forbearance of 100. for a year; and all bonds and assurances for payment of any money to be lent upon usury, whereupon or whereby there shall be reserved or taken above five pounds in the hundred, shall be void; and every person which shall receive, by means of any corrupt bargain, loan, exchange, cheviance, shift, or intercell 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 so reserved, for 100. for a year, shall forfeit the treble value of the moneys or other things lent. 

It seems to be now settled, 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 shall carry interest according to the interest allowed, or agreement made at the time of the debt contracted. And Jetzina Hestinum, from the expiation made of former statutes, says, that a contract made before the statute is no way within the meaning of it, and therefore it is still lawful to receive 6l. per Cent. in respect of any such contract. Hawke, P. C. 246. 

The expiation which has been made of the former statutes being very applicable to the lawt, which is almost in the same words, the proper construction of it will be better collected by a due attention, to the following heads. 

5 Bac. Abr. 411. 

1. What kinds of agreements or contracts shall be deemed usurious, and what not. 

2. What kind of hazard or casualty will bring an interest or contract out of the statute of usury. 

3. In what cases securities shall be forfeited or avoided on account of usury. 

4. In what cases forfeiture of treble value shall be incurred on account of usury. 

It has been referred, that an agreement to pay double the sum borrowed, or other penalty on the non-payment of the principal sum within a given time, is not usurious, because it is in the power of the borrower, who is able to make himself, by repaying the principal according to the bargain. Hawke, P. C. 245. 

But if it was originally agreed, that the principal money should not be paid at the time appointed, and that such clause was inserted only to create the future, the whole contract is void, for the construction of a syll of usury, to this 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 disputed by a specious appearance. Hawke, P. C. 245. 

So if both principal and interest be secured, yet if it be at the will of the party to it, is it usury? Per Dolittler J. As I lend to one 100l. 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, this he shall pay to the party has his election, and may discharge himself by paying it at the 8th year's end. C. T. 599. pl. 20. Roberts v. Trengove. 

But if a man contracts to pay more interest than the statute allows, if the plaintiff requests it, though the plaintiff never does request it, yet it is within the statute of usury. Per Hawthorn v. Heighvens. 

Nevertheless it has been held, that if one contracts 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 be but a shilling, it is an affurance of the contract, and he shall render for the whole contract. C. T. Eliz. 20. pl. 5. Pullard v. Sedg. 

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 Gent. L. 69. pl. 125. in Sid. 

Daven Day's case. 

Where a man for 100l. sells his land, upon condition that if the vendor or his heirs repay the sum before the feast of Easter, or such 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 Easter, and therefore he has no gain certain to receive any profits of the land. Br. 

But where B. delivers wares of the value of 100l. and no more, and took a bond, with a condition to redeem 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. Mc. 397. pl. 520. Reynolds v. Clayton cites it as adjudged in B. R. Skinner's cafe. 

So if A. comes to borrow money, and B. says he will not lend money, but he will sell corn, &c. and give day for payment at such a rate, which rate exceeds ten pounds in the hundred, it is usury. Mc. 398. pl. 520. cites it as Usury. 

If one gives the profits of his lands, worth 10l. for interest for a year of 100l. though he receives part of the profits daily, this is not usury above 10l. for the 100l. Per Popham, Gaudy, and Telceton, but Feness v. Court, Mc. 644. pl. 890. Harley's case. 

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 inflicted, the use ought not to be paid until the end of the year, and contracting to have half of it half-yearly is not warrantable by the said statute, and that the court held that it is not any usurious 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 statute; and the referring it half-yearly is allowable; for he does not receive any interest for more or less time than his money is loaned. 3
U S U

It was adjudged for the plaintiff, and affirmed in error, Cr. C. 283. Gryff. v. Whitecote.

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 gratitude to be repaid by the borrower, if he have no kind of agreement relating to it. Hawt. P. C. 245. f. 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 capital; but not 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 6 l. for every 100 l. that he borrowed; and some like 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 is an usurious contract? and the jury having found a verdict for the defendant, ferjeant Cheshire 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 ordered to be moved again. Holt's Rep. 756.

Lee and Balance & al 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 usury. Thus, Where A. gave to B. upon interest, and B. refused to lend 125 l. but said that for that 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. And. 121. pl. 169. Furse's case.

If A. gives 500 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 he has no issue who shall not within the statute of usury. So if there had been not any condition. But care is taken, that there be no communication of borrowing of any money before. Held per tot curi. 4 Le. 205. pl. 234. Fuller's case.

So where A. on the 17th of July 1759 lent 100 l. to B. to be given by them to A. and his heirs an interest of 20 l. a year, on condition that if the said B. the grantor paid to A. at Christmas 1750 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 repaid, the interest was to cease without paying any thing; so that it is only a plain bargain, and a conditional purchase of an annuity. 5 Rep. 69. Barton's case.

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 that the clause of redemption was inserted to evade the statute, then this had been an usurious contract and bargain within the statute; for if in truth the contract be usurious against the statute, no colours or shews of words will serve, but the party may fiew it, and he shall not be concluded or eltopped by any deed in any other matter whatsoever; for the statute gives averseness in such case. 4 Rep. 60. Barton's case.

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 so long live. 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, and that it was granted to the defendant, if it had been 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. Bracton. 180. Cotterell v. Harrington.

So where in debt upon the bond, the defendant pleaded the statute of usury, and that he came to the plaintiff to borrow of him 120 l., according 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 Vol. II N° 133.

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 had any re-payment of the principal money, not expressed within the bond, it had been an usurious agreement within the statute; and judgment for the plaintiff. Cro. J. 252. pl. 7. Fournier v. Grymes.

A. after the statute 12 Car. 2, v. 27, 3 June 13 Car. 2. agreed to lend B. 100 l. and that for the forbearance and principal, he was to have 20 l. and 15 l. if B. the defendant should pay A. the plaintiff 120 l. at the 20th day of January and 20th of July by equal portions annually, next after the 20th day of the then in-month full, 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 confessed a judgment. Wijjur. J. said, that the contract here was not usurious, but is a purchase of an annuity for three years. Sid. 182. pl. 1. Rowe v. Bellfis.

It is to be observed, that if the agreement of the parties be honest, but is made otherwise by the mislike of a terrveyor, yet it is not usury. 2 Med. 397. Ballard v. Odly.

2. What kind of hazard or esoply 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 interell 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 usury, if the usury goes to the interell only, and not to the principal, it is usury; for the party is to have interest, and not principal; and the hazard of what is, but interest and principal are both in hazard, it is not then usury. Per Duddidge J. Swou. 8. Martin v. Abbe. Cro. Taz. 508. pl. 20. Roberts v. Trenanye.

Debt upon obligation of sixty pounds; the defendant pleaded the statute, and shewed 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 June following, and that the plaintiff should have three pounds for the forbearance, if the plaintiff's son should be then living; and if he did, then to pay but 20 l. of the principal money. The court inquired of the plaintiff, whether the statute of usury was to be applied to this bond, whereupon the plaintiff who bad demurred, became indignant. Mor. 397. pl. 528. Reynold v. Gloyton.

So where A. agreed with I. S. to give him 101. for the forbearance of 20 l. for a year, if B. his fon was then alive. It was held by three justices (Glewite adjointe) to be usurious, by reason of the corrupt agreement, and it is the intent makes it so or not. Cro. El. 665. pl. 43. C. E. Bunter v. Deweam.

Likewise where the obligor was bound in a bond of 300 l. conditioned to pay 22 l. 10s. premium, at the end of the third months after the date, &c. s. d. in the pound at the end of six months, &c. for premium, together with the principal itself, in case the obligor be then living; but if he die before that time, the principal to be lost: This was adjudged an usurious contract, because there was a possibility that the obligor might live for so long; and there is an express proviso to have the principal again. 3 Saik. 390. pl. 3. Majon v. Aboe.

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 trademen being about 30 years of age, of a hale constitution, but impaired 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. 9 E paid
paid down he would engage to pay 10,000l. if the survived the Dutchess, which after some deliberation was accepted by the defendant; and Mr. Spencer 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 Dutchess lived six years after and then died, giving Mr. Spencer 10,000l. per year for a very long time. Mr. Spencer confined a judgment to the defendant for 10,000l. and afterwards paid him 2000l. in part of it, and then died, about a year and eight months after the Dutchess. A bill was brought to be relieved against this demand, upon payment of the principal sum with legal interest, on account of its being a bond of the whole judgments. Lord Chancellor called to his atti-

ance Lord Chief Justice Lee, Lord Chief Justice Witter, Sir John Strange Master of the Rolls, and Mr. Justice Barwet; who gave their opinions in Hill, term 1750, that no contract can be fraudulent within the statute, where it is not for the forbearance. There may be many contracts which this court fets aside, though not frivolous, as marriage-broaching places, broaching bonds, &c. but here appears no fraud or impudence in this case, and the party himself has confirmed it: This was a mere contingence, and the whole money might have been lost; it is a bargain of chance, and a mere wager, and refused the relief prayed by the plaintiffs. 5 B.R. 415. Earl of Chichester and other executors of Mr. John Spencer, against Sir Abraham Jennifer, M. S. Rep. in Chancery, Trin. 24 Gest. 2. And fee the case fully reported in Abdy's Rep. 301.

So where A. delivered to B. 100l. who by instrument covenanted with A. to pay every one of A.'s children which then were and should be living at 12 years end, 80l. A. having then five daughters; and for assurance mortgaged a manor, and was bound in a fine of 500l. it is not usury, but a mere casual bargain. But if it were to pay 400l. at 10 years end, if any were living, then it would be a greater debt; or if it had been paid 500l. if any were living at one or two years end, that had been usury, because of the probability that one of them would continue alive for so short a time; but in 10 years are many alterations. Cro. Eliz. 741. pl. 15. Bedfording v. Abdy.

But where A. lends G. 150l. for re-payment of which C. lefted a close to B. for 60 years, to begin at the end of one year, and at the same time condition that if he paid the 150l. at the end of the two years, the lease to be void; and it was agreed that for the deferring and giving a day of payment for the two years, C. should pay to A. 22l. 10s. quar- tinyly if A. should feel long live. In pursuance of which agreement A. lent the 150l. and A. made the lease, and granting C. the rent of 22l. 10s. to be paid quarterly, if A. should feel long live. This was held to be an usurious contract, for by intention M. might have lived about the two years, and it was an apparent possibility that the should receive that consideration; whereby the is within the statute; and also that the lease taken for the payment of the principal money, and not for any part of the usury is within the statute, because it is for security of money lent upon interest, and for the security of that which the statute intended M. should lose. Cro. Jus. 507. pl. 20. Robert v. Ternayne.

3. In what case securities shall be forfeited or avoided on account of usury.

Here it is to be premised that it is not material, whether the payment both of the principal, and also of the usurious interest be secured by the same 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, but at the payment the obligee takes only legal interest; he shall not be punished for the contract; but perhaps the bond shall be void. 2 Leon. 30. Arg. in Van Henrick's cafe. Thus.

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 fines, yet if B. takes but 80l. it is not usury, within 5 Eich. to make a treble forfeiture; but yet in that case the obligation itself is void. The bond is void presently, and if he receives excessive interest, he shall forfeit the treble values, 5 B. R. 275. pl. 550. Dug. in Tufly, 3 L. 275. pl. 245. Rex v. Tufly.

Where the first contract is not usurious, it shall never be made so by matter ex post facto. Per Williams J. Bulfr. 17. Thus.

In debt upon an obligation, where the statute of usury was pleaded, it was laid by Popham, upon the evidence, that a man lends 100l. to E. and W., which he tenders for the use of it, if the obligor pays the 101l. 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 101l. should have been paid within the time, that would have been usury, that the bond to be paid within the year, when the 101l. was to be paid within the year, and verdict was given accordingly. Ns. 171. Dalton's case. S. P.

Likewise if a man makes an usurious contract with another, and gives him unlawful interest, and agrees to give him for the principal, and after, by a subsequent agreement, gives him the same interest, and takes the debt to be paid to whom the lender owes so much, in satisfaction of his debt; this bond is not voidable by the statute; per Holt Chief Justice, 7 Mod. 119. The Queen v. Settel, alias Beaux.

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 Holt Chief Justice, Far. 119. The Queen v. Settel, alias Beaux.

But if a second bond be made after the forfeiture of a former, and conditioned for the receipt of interest according to the penalty of the forfeited bond, this is as much withiin the statute as if it had been made before the forfeiture; for if such a practice should be allowed, nothing could be more easy than to elude the statute; and tho' the whole penalty be due in dirichets 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. f. 11.

A bond made, to secure a just debt payable with interest, shall not be avoided by reason of a corrupt agreement 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 forbearance of that 100l. for a year, and lends him a bond for 60l. for payment of the 100l. and for the payment of the interest on 30l. into a bond of 200l. together with B. for the payment of a true 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 same 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. 1 M. 752. pl. 1759. Ellin v. Warrin.

Likewise an assurance made in pursuance of a fair agreement for such intered 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 excepted case of the statute; As where the parties agree, that 5l. shall be paid for the loan of 100l. for one year; and the scrivener in drawing the bond for it, both, without the knowledge of the parties, who are illiterate persons, make the 5l. payable at the end of half a year; or where on a loan of 100l. agreed to be paid with common interest, a mortgage is made for the 100l. with a proviso, that it shall be payable on payment of 100l. 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 finis the mortgage is in itself both to unright and profitt. Hawk. P. C. 247, f. 17.

It is to be observed, that a fine levied, or judgment suffered, in pursuance of an unright contract, may be avoided by an averment of the corrupt agreement, as well as any common specialty, or parol 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. Hawk. P. C. 248, f. 20.

So if a judgment be given upon an unright contract, and is a part of the agreement to have a judgment, yet the defendant may avoid such judgment by audit in quere- bos, or by faire factis, brought on the same. Vin. Att. tit. Usury 304.

Where A. mortgaged to B. on an usurious contract for 100l. and before the day of payment B. is ousted by C. and D. brings action against C. C. cannot plead the statute of usury; for he has no title; the estate being void against the mortgagee. Per Pernam. Le. 307, pl. 427. Carter v. Claypole.

But where A. lent B. 45l. on a pledge of jewels, and it was agreed to pay q. f. for it for a year; afterwards B. gave a bond for the same money; per Hals at nis prius, the statute of usury is of the bond void or not. For 119. The Queen v. Sewel alias Beaul.

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 an assurance fairly made and agreeable to the statute, yet it subjects the party to the forfeiture of treble value. Hawk. P. C. 247, f. 125.

But the receipt of interest before the time when it is in finis usurae 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. Hawk. P. C. 247, f. 125.

An information upon the statute 12 Car. 2. c. 13. yet forth, that the defendant, 16 November 20 Car. 2. lent iod. S. 20l. till June next following, and that afterwards (viz.) ad poenam termini præsidii he took of the said iod. S. corrupte & extorsive 30l. for the loan thereof, which is more than the statute allows. The jury found against 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. Twifden 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 flayed till the other side moved, because the court would ad. Roy. 176.

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 are; but for any thing appearing to the contrary, it was for payment of a just debt, and so 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. Sandm. 394. Ferri. v. Smurr. 3 Salt. 390. 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 Twifden 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 was concluded 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 plain fi, nisi. 3 Eliz. 147, f. 13. Radly v. Manning. For more learning in this judg- ment, see Ab. tit. Usury.

Usht. Othello, is the eighth day following any term of feast, as of the St. Michael, the usht of St. Hilary, the usht of St. John Baptist, &c. as you may read 51 Hen. 3. concerning general days in the bench; and any day between the feast and the feast, is laid to be within the usht. The use of this is in the return of answer, as appears by that statute. At the usht of the Holy Trinity, Prouemio to the statute 43 E. 3.

Conteml. (Fr. Uneuf) Any thing necessary for our use and occupation; houhold stuff. Counel. edit. 1727.

Uxanghef. (For extra captus, felicius, extra dominium, vel jurisdictionem,) is 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 fee. Braton, lib. 2. trad. 2. cap. 35. says thus, utanghef dictur extra terras, veniens abinde de terre aliena, & qui captus fuit in terra ista qui tales tales laudet libertatem. See Utanghef.

Ulagato capiendo quando utlagatur in uno comice, & polita fugit in unum, is a writ, the nature wherein is sufficiently expressed by the name. See Reg. Orig. f. 133.

Ulagh. (Uttagus.) An outlaw, signifies Bannatum extra legum. Fleta. ib. cap. 47. See Uffalba.

Ulltary or Ulltawp (Ulagarius et utlagatia, quo Uttawp.)

Uleppe, (Sixt.) Signifies an escape of a felon out of prison. Fleta. ib. t. c. 47.

Uttem. See Affe de uttem. f. 45. a. sect. c. 17. 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. There in other countries are called licentiiarii in jure. Cowel. edit. 1727. See Barrister.

Ulltba, A wound in the face. ib.


W.
W A G

4. We shall retain the word to wages every time, that is, wages or convey or convey to be. Case 1. 1727.

W A I.

The plaintiff's bare affidavit was formerly sufficient to put the defendant to wage his law; but it is provided by Magna Charta, that No bailliff shall put any man to his law, nor to an oath, upon bare saying without witnesses brought in. Before this, as has been premised, the plaintiff, on his declaration upon bare affirmative, might make the defendant swear there was nothing due. At the same time, if the defendant make 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 examine, no more than where the plaintiff in a prosecution produces witnesses to prove his fuggesion. 2 Suit. 683. Mold v. The Mayor of London.

The manner of waging of law is thus: He that is to do it, must bring his co-operators with him into court, and stand at the end of the bar towards the right hand of the Chief Justice; and the Second_shop off him, 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 co-operators to be advised, and tell them the danger of taking a false oath, and if they shall be found at fault, the Second 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 co-operators then take oath, and swear that they believe the said A. B. But before the defendant takes the oath the plaintiff is called by the lesser thrice; and if he do not appear he becomes nonsuit, and then the defendant goes without taking his oath; and if he appear, and the defendant swears that he owes the plaintiff nothing, and the co-operators 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 that he is in non-

...he is not barred, but may bring a new action. 2 Lid. 3. 1824. Day given for waging the law is temporary. Per three Justices against one, 3 Hul. 316.

Where the defendant wages his law infamous, that is, the four terms without day given over, the plaintiff need not be called; consequently cannot be nonsuited. Thus, in debt by assizes of commissaries of bankrupts. Defendant came in and waged his law infamous, and it was debated if the plaintiff might be nonsuited; and at length it was agreed, as much as the defendant cannot wage his law infamous, that the plaintiff cannot be nonsuited; for which reason the plaintiff was not called, but the defendant waged his law; and so the plaintiff was barred. Sid. 466. Buckridge v. Brown.

But in debt, where the defendant tendered to make law immediately that he owed nothing, &c. because the plaintiff appeared in court, it was awarded that the defendant should make his law; and this was the folly of the plaintiff; for he might have impailed to the law, and then at the day he might have been nonsuited; but Brooke makes a quare, if he may be nonsuited at another day in the same term. Br. Lay gage, pl. 35. cites H. 4 c. 2. Bract. 96. or 287. 297.

Wager of law shall not be required without witnesses. M. C. H. 3 c. 28.

For the plaintiff see nihil recepit, &c. St. Will. 12.

Shall be admitted in London notwithstanding the plaintiff shall be mistaken. Ed. 3. 1821.

Granted in treasuries committed by commission in an instruction, 6 R. 2. 12. 2 c. 5.

Where the plaintiff fugitives an account taken, the Justices may take him or his attorney, and admit the defendant to his law, 5 H. 4 c. 8.

Trials in Wales to be by wager of law or verdict of six men. 24 & 25 H. 8 c. 26. 27. 44. See 5 Bon. Art. tit. Wager of law, and 15 Vin. Art. p. 58.

Wagges. By statute 7 Ann. c. 17. All wagers laid upon a contingency relating to the late war with France, and all securities, &c. therefore were declared to be void, and performers concerned to forfeit double the sum laid.

Waggers, Is what is agreed upon by a matter to be paid to a servant, or any other person who hires him to do business for him. 2 Lid. 3. 1824. The wages of servants, labourers, &c. is to be justified by justices. 5 El. c. 4. 1 Jac. 1. cap. 6. And justices of peace may order payment of wages for husbandry, &c. but not in other cafes. Med. Cof. 204. 205. The statute of laborers extends to the covenant servants in husbandry; the order of justices was quashed in B. R. because made upon the servant's oath, without other evidence. 2 Lid. Raym. 1305. See servages. Wages of seamen, vide lat. 4 & 5 Ann. 1 Geo. 1. cap. 25. For the better adjusting and more easy recovery of the wages of certain servants, vide lat. 30 Geo. 2 c. 19. 27 Geo. 2. cap. 7. See Labours, Manufactures, Servants, and 23 Vin. Art. 406.

Waggoners and Waggoners. See Carriages, Highways.

Wafes, (from the Sax. Wafan, Fr. Chois guerius, Lat. Bona Viva) Are goods which are stolen and are valueable, if they be not hafled away. They usually occasion fear of being apprehended: which are forfeited to the King or lord of the manor. Kistl. 81. If a felon in purfur waves the goods, or having them in his custody, and thinking that pursu was made, for his own ease and more speedy flight, flies away and leaves the goods behind him, and is apprehended, the King or lord of the manor, within whose jurisdiction they are left, who hath the franchis of wafe, may feize the goods to the King's or lord's use and keep them; except the owner makes fresh pursu 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. 11. 5 Rep. 109. Goods waved by a felon, in his flight from those who pursue him, shall be forfeited: And though wafe is generall spoken of as
WAL

The King is sovereign lord, and shall do right in default of the lords, sty. H. 37. 1. 3 Ed. 17.

United to England, sty. Wall. 12 Ed. 1.

Direction for execution of the office of sheriff, coroner, sty. in Wales, sty. Wall. 12 Ed. 1.

They shall be entitled to the juries of Chester, and answer in the excheques there, 12 Ed. 1.

The lords of the marches shall be attendant to the crown of England, 28 Ed. 3, c. 2.

Wilmshen 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 Welsh do not restore differences taken in England upon request, repelais to be made, 2 H. 4, c. 16.

Thereupon No. Wilmshen to be convicted at the suit of a Wilmshen in Wales but by an English jury, 2 H. 4, c. 19. 4 H. 4, c. 26.

Ministers and vagabonds in Wales, 4 H. 4, c. 37.

Wilmshen not to go armed, 4 H. 4, c. 29. 26 H. 8, c. 4, f. 4.

Wool and armour shall not be carried into Wales, 4 H. 4, c. 30.

Wilmshen not to be officers in Wales, 4 H. 4, c. 32.

For felonies in south Wales, the counties where the felons were born shall make satisfaction, unless they apprehend them, 9 H. 4, c. 3.

The justices and other officers of the court shall be officers in the exercise of authority where they are taken, and not the felons, 9 H. 4, c. 4.

The lords in Wales shall be commanded to take and execute those who are outlawed for felonies in England, 2 H. 5, f. 2, c. 5.

Taking Englishmen or their goods and carrying them into Wales made treason, 2 H. 5, c. 3. 27 H. 6, c. 4. Extradited to the duchy of Lancaster, 28 H. 8, c. 6.

Penalty of importing goods into Wales, and then into England, without paying custom, 20 H. 6, c. 7.

Wilmshen outlawed for felony or treason, and Bzin to Herefordshire, shall be pursued with hue and cry, 23 H. 6, c. 4.

Grants of fines, and licences to bake and brew in north Wales, repealed, 25 H. 6.

For the strict custody of jurors in Wales, 26 H. 8, c. 4.

The penalty of ferreynmen transporting offenders over the Scorn, 26 H. 8, c. 5.

Felonies committed in Wales shall be tried in the next English county, 26 H. 8, c. 6. 34 & 35 H. 8, c. 26, f. 85.

Refrictions of the government of the lords marches, 26 H. 8, c. 6, f. 2.

Wilmshen not to bring arms to court, 26 H. 8, c. 6.

Batteries committed by Wilmshen in Gloucestershire, Herefordshire, and Salop, punished by a year's imprisonment, 26 H. 8, c. 11.

Directions for the ordering of clerks convict in Wales, 26 H. 8, c. 12.

For the appointing of justices of peace in Wales and Chester, 27 H. 8, c. 4.

Appointment of justices of peace in Wales and Chester, 27 H. 8, c. 5.

Exactions in the forefews in Wales prohibited, 27 H. 8, c. 14.

Wilmshen might enjoy eattles transferred to them by the statute of 25 H. 8, c. 10, f. 18.

The laws and liberties of England granted to the people of Wales, 27 H. 8, c. 26. 34 & 35 H. 8, c. 26, f. 91.

The lordships marchers divided into counties, 27 H. 8, c. 26, f. 3. &c. 28 H. 8, c. 3. 33 H. 8, c. 13.

The counties of Monmouth, round from 34 & 35 H. 8, c. 26, f. 3. taken away, 1 W. & M. c. 17, 9 & 10 W. 3, c. 16.

The counties of Wales atercertained, 34 & 35 H. 8, c. 26, 21 Jac. 1, c. 10.

9 F.

The
WAR

Walkers, Are foresters within a certain space of ground, alluded to their care in forests, &. Cremp's jurid. 145.
Walt, Sea-Walt, A bank of earth. See Waters gate.
Walkington, The demesne lands in Walkington may be let by copy, and shall be copyholds. 35 H. 8. c. 13.
Walkham blacks. In the reign of Geo. 1. there sprung up a set of depraved villagers called Walkham blacks, headed by one whom they called K. John; who blacking their faces, and using other disguises, robbed forests, parks, and warrens, destroyed castles, levied money on their neighbours, by threats and menaces to fire their houses and burn down other villages; but they were suppressed, and declared felons, by Stat. 9 Geo. 1. cap. 22. See Black act.
Wang, (Sax.) We use for the cheek, or jaw wherein the teeth are set: Hence Chaucer called the cheek-teeth or grinders, wangs or wang-teeth, which is recorded in this old way of spelling writings:

And in witnesses that this is sooth, I bite the wax with my wootch.
Wangans, or driving the wafans, is to drive deer to a fland, that the lord may have a shoot; which is one of our ancient custumary tenures of lands. Blount's Ten. 140.
Wapentake, (from the Sax. waepen, i.e. armature and statu, tanta) Is all one with what we call a hundred; specially used in the north countries beyond the river Trent. Bradl. 1. 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 constable, 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 theouching their weapons. Howden. Pota. lib. 2. But Mr Thomas Smyth says, that antiently mullers were made of the wood and mud from the houses or the other inhabitants of every wapentake; and from those that could not find sufficient pledges for their good bearing, their weapons were taken away, and given to others; whence he derives this word. Rep. Angl. lib. 2. cap. 16. Camb. Bir. 159. 2 lefl. 93. Stat. 3 H. 5. cap. 9. 6 H. 8. cap. 15. 6 H. 8. cap. 7. Wapentake be all signification of fefts or hundred good decent Wapentake. Mss. in Bibl. Cotton.
Wapping, An act was made for the partition of Wapp ing Marsh. Stat. 25 H. 8. cap. 9. And permits sheltering themselves from debts, and obstructing the execution of writs in Wapping, Starly, &c. to be guilty of felony by 12 Geo. 1. cap. 22.
War. (Bellum) A fighting between two Kings, Princes or parties, in vindication of their just rights; also the face of war, or all the time it lasts. 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 fopt, 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 Kyi. 2. 18. 22. 24. 26.
Wages

Wages
W A R

Wages shall be allowed to the conductors of fiddlers, 1 Ed. 3. b. c. 7.

None shall be bound by writing to come to the King with arms and arms, 1 Ed. 3. J ul. 2. c. 15.

Soldiers shall have wages from the day that they go out of their counties, 18 Ed. 3. c. 7. H. 4. c. 13.

Covenants of pesons retained in the King's service to be fent to the Exchequer, 5 R. 2. b. f. r. 11.

The duty of those who have lands or pensions for maintaining the King's forces, 4 H. 4. c. 13. and officers, 11 H. 7. c. 1.

St. 14 H. 7. c. 1.

The custody of castles, &c., taken from those who had them by patent, 2 Ed. 3. c. 6. 16.

The French ordered to depart the realm, and the Queen impowered to revoke their patents of denization, 4 Ed. 5. c. 57.


Ward, (Custodia) 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. Stone's Sac. A forest is divided into wards. Mansuet, par. 1. p. 97. And a prison is called a ward. Lastly, the heir of the King's tenant, that held in capite, was termed a ward and a ward's appointment. But this wardship is taken away by the flat. 12 Car. 2. cap. 24.

Warda, The custody of a town or castle, which the inhabitants were bound to keep at their own charge. Mon. Angl. tom. 1. p. 372.

Wardown, (Wardungum) Seems to be the same with wardship.

Warden, (Gardianus, Fr. Gardein) 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. 14 H. 8. cap. 2. Warden's of the marches of Wales, &c. 14 H. 7. cap. 8. Warden's of the peace, 2 Ed. 3. cap. 3. Warden of the Marches, 2 Ed. 3. cap. 3. Warden of the armour of the Duke of York's exchange. 2 Ed. 3. cap. 3. Warden of the armour of the town. 1 Ed. 4. c. 1. Warden of the King's writs and records of his court of Common Bench. Ibid. Warden of the lands for repairing Rochester bridge, 18 Eliz. cap. 7. Warden of the gardens. 14 Cor. 2. cap. 3. Warden and Minor Canons of St. Paul's church, 22 & 23 Cor. 2. Warden of the Fleet prison, 8 & 9 H. 3. &c. See Guardian.

Wardmore, (Wardsmot) Is a court kept in every ward in London; ordinarily called the Wardmore court; and the wardmore infeft hath power every year to inquire into, and present all defaults concerning the ward, and all defaults concerning the ward's lessees; that engines, &c., are provided against fire; persons selling ale and beer be honest, and suffer no disorder, nor permit gambling, &c., that they sell in lawful measures; and searches to be made for vizards, beggars, and idle persons, &c., who shall be punished. Chirl. H. 2. Lex Lond. 185.

Wardship, Money paid and contributed to watch and ward. Decemday.

Wardship, Is to be quit of giving money for keeping of ward. Tertius de lep.

Warden, Was a court first erected in the reign of King H. 8, and afterwards augmented by him with the office of a livery, whereof it was fikcd the Court of wards; in livers, now discharged by the 12 Cor. 2.

Wardstaff, The constable or watchman's staff; and the manor of Langbourn in Essex is held by the service of the wardstaff, and watching the fame in an extraordinary manner, when it is brought to the town of Aylesbury.

Wardstrate, To plough up land defigned for wheat in the foring, in order to let it lie fallow for better improvement; which in Kent is called summer-land: Hence warestrable, campus, a fallow field; campus ad warestratum, terra warestrata, &c.

Wares, Certain wares not to be brought into this realm from abroad, to be sold or exchanged here, on pain of forfeiture. See flat. 5 Eliz. cap. 7.

W A R


Warrantura, Is used for garniture, furniture, provision, &c. Pot. 9 Ed. 3.

Warrant, It is an ancient custum, if any tenant holding of the castle of Dover failed in paying his rent at the day, that he should forfeit double, and for the cond failure treble: And the lands to held are called Terris cultis & terris de warrant, Mon. Angl. tom. 2. pag. 590.

Warrant, A præcie under hand and seal to some officer to bring any offender before the person granting it:

And warrants of commitment are filled by the privy council, a committee of five or a justice of peace, &c., where there hath been a private information, or a writs have been issued to this effect. Gard. 5. cap. 54. Any one under the degree of Nobility may be committed for a misdemeanour, or any thing done against the peace of the kingdom, by warrant from a justice of the peace; tho' if the person be a peer of the realm, he might be apprehended for a breach of the peace by warrant out of B. R. U. &c. Dal. Jusf. 265. A constable ought not to execute a justice's warrant, where the warrant is unlawful, or the justice hath no jurisdiction; if he doth, he may be punished. Pless. 394. But if any person abuse it by throwing it in the dirt, &c., or refuse to execute a lawful warrant; it is a contempt of the King's person and authority. Pless. 395, 396. And he is then may be indicted and fined. Cronft. 149. See Contumty, Juirftices of the peace. For the apprehending persons in any county, upon warrants granted by justices of any other county, see flat. 24 Geo. 2. cap. 55. For warrants of diftres, see Distresses upon penalties.

Warrant not to be delivered by sheriffes before they have received the writ, 6 Geo. 1. c. 21. f. 53.

The day of suning out a writ shall be indorsed on the warrant, 6 Geo. 1. c. 21. f. 54.

To be indorsed by the attorney, 2 Geo. 2. c. 23. f. 23.

By the sheriff, 12 Geo. 2. c. 5. f. 4.

Proceeds not to be avoided for default of indorsing the warrant, 12 Geo. 2. c. 13. f. 4.

Warrant or attorney, Is an authority and power given by a client to his attorney, to appear and plead for him; or to suffer judgment to pass against him by confesling the action, by nil dict, non sum informatus, &c., And a writ of an order of attorney given by a man in custody to confess a judgment, no attorney being present, is void as to the entry of a judgment; yet it may be a good warrant to appear and file common bail. 2 Lifl. Abr. 682. A warrant of attorney which warrants the action, is of course put in by the attorneys for the plaintiffs, &c., and de vice versa; &c., so that it differs from a letter of attorney, which passes ordinarily under the hand and seal of him that makes it, &c., and is made before winneces, &c., Tho', a warrant of attorney to suffer a recovery by the tenant, is acknowledged before such persons as a commission for the doing thereof direets. Wyl. Symb. par. 2. A warrant of attorney filed of any term pendant lite is sufficient. 1 Str. 526. 2 Str. 807.

Sealing warrants of attorney whereby a judgment shall be reversed, made felony, 8 H. 6. c. 12. f. 3.

Warrants of attorney shall be recorded the same term that the exigent issues, 18 H. 6. c. 9.

Shall be filed the same term that the issue is joined or before, 33 H. 8. c. 30. f. 2. 18 El. 4. c. 3.

The same term of the declaration and appearance, 4 An. 16. f. 3.

Waruntuta Chartae, Is a writ that lieh where a man is infefted of lands with warranty, and then he is fraudulent, if the feoffor be impeded in affize, or other action, in which he cannot, without a vouch or call to warranty, he shall have this writ against the seoffor, or his heirs, to compel them to warrant the land unto him; and if the land be recovered from him, he shall recover as much lands in value against the warrantor, &c., But the Waruntuta chartae ought to be brought by the seoffors depending the first writ against him, &c., he hath loit
Warranties in their more general divisions are of two kinds, first, a warranty in deed, or an express warranty, which is that which the vendor makes that his life is made by deed, which has an express clause of warranty contained in it, as when a conuitor, feffor or leflor, covenants to warrant the land to the conuitor, feffor or leflor. 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 Jef. 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 a heir from of the land, or by such claim made by him that had no right, or possibility of right to the land, and is collateral to the title of the land, 1 Jef. 370.

Also there is a warranty which commences by dfeffin or wrong. Lit. feft. 638.

Whereupon it may be said to be either general, viz. by one and his heirs to another and his heirs, or particular, and restrained to a certain person. 5 Buc. Atr. 439.

1. To what things a warranty may be annexed; and what words and clauses in a deed will make a warranty.

2. What shall be deemed a good warranty in deed.

3. What shall be deemed a good warranty in law.

A warranty 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 flow out of lands or tenements: And it may not only be annexed to inheritances in eft, but also to rents, commons, eftovers, &c. newly created. As a man (ftime grant) may grant a rent, &c. out of land for life, in toll, 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 flows 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 warranty in warranty upon the special 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 an acre of land, this exchange is good, and every exchange impliceth a warranty in law. And so a rent newly created may be granted for overly of partition. 1 Jef. 366.

If a man felled of rent-feck, illusing out of the mariner of Dale, takehen a wife, and the husband relieves to the tenant, and warranteth tenements granted for that purpose, and the wife bringeth a writ of clawer of the rent, the tenant shall vouch, for that albeit the releas enraged by way of extinguishing, 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 warrantead also. 1 Jef. 367.

But a warranty doth not extend to any lease, though it be for many thousand years, or to eales of tenant by fluate flape, or merchant or elegy, or any other chert, 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 in an action of, or upon the fluate of 5 R. 2. and the like. But in such actions, which none but a tenant of the freehold can have, as upon the sluate 8 H. 6. alize, or the like, there can be pleaded in bar. 1 Jef. 368.
A warranty may be made upon any kind of conveyance, as upon fines, feoffments, gifts, &c. Also a warranty may be made upon a free fee, or a fee simple, and covenants made to the tenant of the land, although he be who makes the release or confirmation has no right to the land, &c. And yet some have held, that no warranty can be raised upon a base release or confirmation, without the law is otherwise, or with the transfer of the possession. But the warranty is good, or with the transfusion of the possession.

The words defend, or acquit, although they are commonly used in deeds, yet of themselves without the other will not make a warranty. *Id.* *Id.* *Id.* 5 Rep. 17. 18. *Spencer's case.*

The words dedi & coven, or dedli only, in a feoffment make a warranty, when an eftate in fee or inheritance passes by the deed. 1 *Inst.* 384.

But the word coven or coveny, or demi & coveny, do not make such a warranty, in the case of a feuhold or inheritance. 5 Rep. 18. *Spencer's case.*


If a man by deed warrants land to J. S. and his heirs, and the warrantor does not bind his heirs to the warranty, or does not warrant to J. S. and his heirs, but to J. S. and his assigns, these are good warranties. *Dyer* 42. 1 *Inst.* 383.

But if a man makes a feoffment in fee, and warranty to the fee-simple, without naming his heirs, there the warranty would be good only for life, because it is taken fibrillly. And yet if the feoffee recovers in value, he shall recover fee-simple, because he loses fee-simple. *Dyer* 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 say 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.* *Id.*

2. What shall be deemed a good warranty in deeds.

A warranty in deed, or an express warranty, as has been said, is created only by the world warranty. 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 proper issue; 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 are proper parts of the whole against the man of full age, and void as to the infant. *Id.* *Id.*

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 ano- ther, he may bind himself by word, 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 eftate to which the warranty is annexed, that may support it; for if one cove- nant not eftate, or makes him no eftate, or makes him an eftate that is not good, and co- venants to warrant the thing granted; in these cases the warranty is void. 10 *Rep.* 96. *Vol.* II. *No.* 134.

Lastly, if the eftate to which the warranty is annexed is determined, the warranty depends on it; and is determined by the death of the man making a gift in tail, and warranteth the land to his heirs and assigns, and wards; and wards tenant in tail maketh a feoffment, and dies without issue, he shall not rebut the doctrine of *Hoyland in reverser*, because that the eftate to which the warranty is annexed is determined. *Id.* *Id.*

Fourthly, that the eftate to which the warranty is annexed, be such an eftate as is able to support it, and therefore that it be a sealmat for life at the least; for it one makes a sealmat for years of land, and birds himself and his heirs to warrant the land; this is no good warranty, either 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 case.*

Fifthly, that the warranty depends on 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 continues the tail, and has issue two sons, and the uncle releases to the devolution with warranty, and dies; this is no good warranty to bind the younger son. 1 *Inst.* 12. *Lit.* *Id.* 735.

So if in this case tenant in tail deters the tail with warranty, &c. having issue two sons, and died excluding other lands is made by the late tenant in fee simple, to the value of the land in tail; the younger son is not barred by this warranty. 1 *Inst.* 12. *Lit.* *Id.* 735.

So if none gives his land to the eldest son and the heirs male of his body, the remainder to the second son, &c., and the eldest alien with warranty, having issue a daughter and dies; this is not a good warranty to bar the second son. *Lit.* *Id.* 718.

So if tenant in tail has issue two daughters by divers venters, and dies, and they enter, and a stranger dics them, and one of them releases all her rights, and binds her and her heirs to warrant it; in this case the warranty is not good to the other filter, 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.* *Id.* 737.

So if two brothers be by demi-venters, and the eldest releases with warranty to the dimer 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 descant of the title nor the warranty be interposed, for if one binds him and his heirs to warranty, and, after is attained of treason or felony, and dies; this warranty does not bind his heir. *Lit.* *Id.* 745.

Seventhly, that the eftate of freehold that is to be barred be put to a right or before it the time of the warranty made, and that he to whom the warranty does defect have then but a right to the land; for a warranty will not bar an eftate of freehold or inheritance in *effe*, in a possession, in reverser 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 descant of the warranty, the eftate of freehold or inheritance be displaced and devolved, 10 *Rep.* 96. *Symonds's case.*

And therefore, if there be a father and son, and the son has a rent or feise, suit to a mill, rent-charge, rent-flee, common of falth; and other covenants, and his heirs in fee of land of the father, and the father makes a feoffment in fee with warranty, and dies; this shall not bar the son of the rent, common, &c. *Id.* *Id.*

And although the son, after the feoffment with warranty, and the father being dead, and the father, had been deftice, and being out of possession, the warranty had defended upon him, yet this warranty shall not bind him. *Id.* *Id.*
WAR

S. If no collateral ancestor resides to my tenant for life with warranty, and dies, and this warranty defends upon me, this shall not bind my reversion or remainder. 1 B. N. C. C. 265.

But if in the case before, the son be defeised of the rent, &c. and affirms himself to be defeised by the bringing in his child, (for otherwise he shall not be held to be out of possession of a rent, or the like) and after the father resides with warranty and dies, in this case the collateral warranty shall bar and bind the son of his rent, 1 B. N. C. C. 265.

If in the left case my tenant for life be defeised, and my ancestor resided to the defeised with warranty, and dies; this is a good warranty to bind and bar me. 1 B. N. C. C. 98.

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 same 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 he a successor only in case of a corporation, he shall not be bound by the warranty of the corporation. 1 B. N. C. C. 98.

Tenthly, that the heir that is to be barred by the warranty be of full age at the fall of the warranty; if so 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 defect, after his full age, before his entry. 1 Rep. 140. 6. Chitty'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 de& &c. or de& only in a feoffment, make a good warranty in law, to the feeoffice and his heirs during the life of the feoffor. 1 Inst. 384.

But the word de& only in a fine or feoffment, does not make a warranty in law. A warranty in law may be good in its creation, altho' it be without deed; for if a man by his laf will and testament devolves lands to another man for life, or in tail, receiving rent; to the estate there is a warranty in law annexed. 1 Inst. 386.

And altho' there be an express warranty in the deed, yet this does not take away the implied warranty of the law. 1 Inst. 384.

Every partition and exchange implies it, a special warranty in law. 1 Inst. 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 Inst. 334.

So when deviser is assigned to a woman, there is a warranty in law included, which is that the tenant in dower being impaled, shall vouch and recover in value a third part whereof she is dowerable. 1 Inst. 384.

And this warranty in law is of the nature of a linear warranty, and shall bind as a linear warranty only, for the life of the tenant in dower, and not for the term of time.

And hence it is, that this warranty and allies in some cases is a good bar, as if a tenant in tail exchanges for other lands which are defended to the issue, and he has accepted of them, or if not, that other lands are defended to him. 1 B. N. C. C. 334.

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 allies in fee-simple defend, this warranty in law and allies is a good bar. 1 B. N. C. 52. See 5 B. N. A. tit. Warranty.

WAFFLE. [Waffel, from part. pass. waffle, to fuffle, or the F. warroux.] It is a place of肤 place preroged, by prescription or grant from the King, for the keeping of beasts and fowls of the warren; which are cotes, partridges, pheasants, and some kinds of game, woodcocks, and water fowl. 1 C. & S. 317. 52. C. 24. 2 cap. 25.

A person may have a warren in any of the King's forests, and may alien the land, and refuse the franchise: But none can make a warren, and appropriate thefe creatures that are for the use only, without licence from the King, or where a warren is claimed by prescription. 2 Rep. 168. 1 Rep. 167. 31 Edw. 3. cap. 25.

If any person offend in a free warren, he is punishable by the Common law, and by statute 21 Edw. 3. And if any one enter wrongfully into any warren, and chase, take or kill any conies, without the consent of the owner he shall forfeit treble damages, and suffer three months imprisonment. 52. Edw. 3. 22 Edw. 3. 52. C. 24. 2 cap. 25.

When conies are on the foil of the party, he hath a property in them by reason of the possession, and action lies for killing them; but if they run out of the warren, and et up a neighbour's corn, the owner of the land may kill them, and no action will lie. 5 Rep. 104. 1 C. 1. 74. C. 21. 2 cap. 25.

When a person has a warren, he does not become liable to do any thing to prevent or prevent. 63. Edw. 3. 22 Edw. 3. It is said, that in the time of the Saxon, the warren, or the right of the same, being in the king's hand, was called. Warl. Was a contributive usuall made towards armour in the time of the Saxon, Leg. Conut.


WATERS. [Waterras, from part. pass. wassarre, to wassarre, to row a boat from one side of a river or arm of the sea; as the wasser in Linebyrig, &c. Knight. 734.

Wawhlette, (Sax.) A festival song, herefore sung from door to door about the time of the Epiphany.

Waffe, (Fhullam.) Hath divers significations: First, It is a spoil made either in houses, woods, lands, &c. by the tenant for life or years, to the prejudice of the heirs, or of him in the reversion or remainder. Kitchen, vol. 1. 168. Whereupon the writy of waffle is brought, for the recovery of the thing wafted, and treble damages. Waffles of the forest is most properly where a man cuts down his own woods within the forest, without licence of the King, or Lord Chief Justice in Eyre. See Manwood, part 2 & 3. Secondly, Waffle is taken for those lands which are not in full and perfect possession, but lie common; which seem to be so called because the lord cannot make such profit of them as of his other lands, by reason of that use which others have of it in passing to and fro; upon this some may build, cut down trees, dig, &c. without the least licence. Thirdly, Wares, day and waffle, Annuity, dies &c. waffle, is a punishment or forfeiture belonging to petty treason or felony, whereof see Stanwix, Pl. Cor. lib. 3. cap. 30. And see Deer, Day and Waffe. Cowell, edit. 1727.

Waste is the committing any spoil or deftruction in houses, lands, &c. by tenants, to the damage of the heir, or of him in the reversion or remainder. When upon the writ or action of waflle is brought for the recovery of the thing wafted, and damages for the waflle done. 5 Bac. Abr. 459.

There are two kinds of waflle, voluntary or actual, and negligent or permissive. Voluntary waffle may be done by cutting down trees, or cutting or plighting timber, or destroying timber-trees: negligent waste may be by sufferine a house to be uncovered, whereby the spars or rafters, planches or other timber of the house are rotten. 1 Inst. 52. 3.

Where A. leased a house which was ruinous at the time of the demise; thereupon, he obliged himself not to do or suffer any voluntary waste. Onen 6. 6. that house falls, and A. brought debt, and it was adjudged that it lies: for it is waste, tho' the lease may excuse himself upon the spe-

So where A. leased a house and land for years by indenture, in which was a clause, that if the leffer the to do any wale, the leffer may re-enter. The leffer suffered the house to fall for want of covering and repairing. These words were, (to do any wale) yet Walshe inclined that leffer might re-enter, because such wale is punishable by the statute of Glower, and the words (any wale) is general and indifferent to either of the two kinds of wale viz. voluntary or negligent. &c 2 Dyer 281. pl. 21.

The statute of Marlebridge, 52 Eliz. c. 23, sect. 2, reads, that "Farmers, during their term, shall not make wale, false, nor exile, of houses, woods and me, or of any thing belonging to the tenements 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 convict, they shall yield full dammage, and shall be punished by amercement grievously."

This act provideth remedy for wale done by leffer for life, or leffor for years, and it is the first statute that gave remedy in these cases: for the rule of the Register is, that there are five manner of wales for wale, viz. two at the common law, as for wale done by the tenant, and two by statute or special law, as against tenant for life, tenant for years, and tenant by the curtesy. 2 Ily. 145.

This statute is a penalty law, and yet because it is a remedial law, it has been interpreted by equity. Arg. 10 Mdb. 281. In case of Hammond v. Wibb.

Farmers] Here farmers do comprehend all such as hold by lease for life or lives, or for years, by deed or without deed. 2 Ily. 145. This has been resolved likewise that it should extend to strangers. Arg. 10 Mdb. 281. In case of Hammond v. Wibb.

Altho' the Register says 'fence' that per statutum de Marlebridge, cap. 23, data factum demum prohibito vestiti versus tenentes anworn, 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 required. 2 Ily. 145.

shall not make wale.] By these words they are prohibited to suffer wale, for it has been resolved that this act extends to waile emitted, tho' the word is fessitant, which literally imports altive wale. Arg. 10 Mdb 281. In case of Hammond v. Wibb.

Nor of any thing] Houses, woods, and men were before particularly named, and their words do comprehend lands and buildings of this farm. 2 Ily. 146.

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 escheated, this tenancy so escheated did belong to the tenement, that he held in farm, and therefore this extended to it; and the leffer shall have a writ generally, and forgive a lease made of the lands escheated by the leffer, and maintain it by the special matter. 2 Ily. 146.

Special licen by vertue] This grant ought to be by deed, for all waile tends to the discontinuance of the lef- fer, and therefore no man can claim to be dispunishable of wale without deed. 2 Ily. 146.

Likewise this special grant is intended to be abeole impetitio vestiti; without impeachment of wale. 2 Ily. 146.

[Trdi fall damange.] And this must be understood in such a prohibition of wale upon this statute as lay against 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 Ily. 146.

But wale may be committed not only in houses and lands, but in gardens, orchards, timber-cove, dover houses, barns, orchards, pig-pens, etc. as other subjécts of replecy, as will be shown. 1 Ily. 53. a.

W A S

1. What acts shall be deemed waste.
2. What wale shall be deemed extant, and unjustly
3. This may bring an action of wale, and against whom
4. In what cases general waste may be restrained by
5. What relief may be given in equity, in cases of wale.

It has been laid down as a general principle, that the law will not allow that to be wale, which is not any way prejudicial to the inheritance. Hill. 35. Barret v. Barret. Nevertheless, it has been held, that a leffer or tenant cannot change the nature of the thing demised: tho' in some cases, the alteration may be for the greater profit or the lessor. Thus: if a leffer convert a farm into a fulling-mill, it is wale; also, the conversion be for the leffer's advantage. 

Allouing a brewhoule of 12. ac. on to
other houses let for 200. a year, is wale, because of the alteration of the nature of the thing, and of the evidence, 1 Lev. 309. Cole v. Owen.

We shall now consider what shall be deemed wale with respect to particular subjeéts of property.

Wale in lands. If the tenant converts arable into wood, or if an arable, it is wale; for it did not only change the coufe of husbandry, but also the proof of evidence. Hotart's Rep. ceste 296. p. 234.

But if a leffer suffers arable land to be friched, and not munered, so that the land grows full of thorns, &c. this is not wale, but ill husbandry. 2 Roll. Abr. 814.

Likewise, the conversion of meadow into arable is wale, for it not only changes the course of husbandry, but the proof of his evidence. 1 Ily. 53. b.

But if meadow be sometimes arable, and sometimes meadow, and sometimes fallow there, the plowing of it is not wale. 2 Roll. Abr. 815.

Neither is the division of a great meadow into many parcels, by making of ditches, wale: for the meadows may be better for it, and it is for the profit and ease of the occupiers of it. 2 Le. 174. pl. 210.

Likewise converting a meadow into a hop-garden, is not wale; for it is employed to a greater profit, and it may be meadow again; per Windham and Rhodes J. But Periam, 1 Ily. 647, for it is also with greater labour and charges. 2 Le. 174. pl. 210.

But converting a meadow into an orchard, is wale, tho' it be to the greater profit of the occupier. Periam, 1 Ily. 647.

If a leffer ploughs the land flored with coverts, this is no wale; unless it be a warten by charter or prescription. 2 Roll. Abr. 815.

So if a leffer of land destroys the cemony-borough in the land, it not being a free warten by charter or prescription, it feems is not wale; for a man can have no property in them, but only a possiilion. Id. ibid. Caw. 6. Moyle v. Moyle.

It is wale to suffer a wall of the fences to be in decay, so as by the flowing and reflowing of the fences the meadow or marsh be surrounnded, whereby the same becomes unprofitable. But if it be surrounded suddenly by the rage and violence of the sea, occasioned by wind, tempest, or the like, and without any default in the tenant, this is not wale. Yet if the tenant repair not the banks or walle against rivers or other waters, whereby the meadows or marshes be surrounnded and become suflfy and unprofitable, this is wale. 1 Ily. 53. b.

So a farriery, if arable land be surrounnded by such default, for the surrounding wailes away the marsh and other manure from the land. 2 Roll. Abr. 815.
W A S

*Wife in trees and woods.*

Trees are pleasant of the inheritance, and therefore, if a leafe allegeth his term, and
excepts the timber-trees, it is void; for he cannot ex-
cept that which doth not belong to him by law. 5 Rep.

The leafe, after he has made a leafe for life or years,
may by the death of the trees, or reasonable efforts out of
them, to another and his heirs; and the same shall take
effect after the death of the leefe. 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 leffe. 11

The leafee shall not have a particular interest in the
trees, but the general interest of the trees doth remain in
the leefe: for the leffe shall have the waste and fruit of
the trees, and the shadow for his cattle, &c. But the in-
terest of the body of the tree is in the leffe, as parcel
of his inheritance. Therefore if these are overthrown,
by the leefe or any other, by wind or tempest, or by
any other means disjoined from the inheritance, the lef-
for shall have them in respect of his general ownership.

With respect to timber-trees, such as oak, elf, elm,
which are timber-trees in all places) waste may be com-
mitted in them either by cutting them down, or lopping
of them, or doing any act whereby the timber may de-
lay. Also in countries where timber is scant, and beeches
or the like are converted to building for the habitation
of man, they are also accounted timber. 1 Inf. 53. a.
54. a. Thus, waste may be committed in cutting of
beeches in Buckinghaufire, because there by the custom
of the country it is the best timber. 2 Roll. Airs.
814.

So waste may be committed in cutting of birches in
Buckhurts, 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 waste; and if he
suffer the young germenis to be destroyed, this is a de-
struction. So it is, if the tenant cut down woodward
(as he may by law), yet if he suffer the young germenis
to be destroyed, or if he flub up the fame, this is destruction.
1 Inf. 53. a.

If leefe or his servants suffer a wood to be open, by
which beastes enter and eat the germins, tho' they grow
again, yet it is waste; for after such eating they never
will be great trees, but shrubs. 2 Roll. Airs. 815.

If a termo: cuts down woodward of hazel, Willows,
maple, or oak, which is feasable, it is not waste. 2
Roll. Airs. 817.

If pines are feasable wood to cut from ten years,
it is not waste to cut them down for houfe-boat. Ibid.
But if the afores are gods of the age of nine years, and
able for great timber, it is waste to cut them down. Id.
ibid.

If oakes are feasable, and have been used to be cut
always at the age of twenty years, it is not waste to cut
them at such age, or under, for in some countries, where
there is a great plenty, oaks of such age are but feasable
wood. Id. ibid.

But after the age of twenty-one years, oaks cannot
be said to be wood feasable, and therefore it shall be waste
to cut them down. Id. ibid.

Cutting down of willows, beech, birch, aflo, maple,
or the like, flanding in the defence and safeguard of the
houfe, is destruction. If there be a quickset fence of
white thorn, if the tenant flub it up, or suffer it to be
destroyed, this is also destruction: And for all thefe and
the like destruftions, an action of waste hath. 1 Inf.
53.

The cutting of horn-beams, hazels, willows, fawfows,
tha' of forty years growth, is no waste, because those
pl. 6.

The leffe covenante, that he will leave the wood at
the end of the term as he found it; if the leffe cut
down the trees, the leffe shall profenty have an action
of covenante: For it is not poiffible for him to leave the
trees at the end of the term. So that the impossibility
W A S

Walfte with refpeft to houfe. Waffe may be done in houfe, by pulling them down or proflating them, or by burning them without being liable to an action of waffe for he has joined it to the frank tenement. *Ed. 128. b. pl. 31.*

Earl of Bradford v. Smith.

If waffe be affigned in pulling up a plank floor and mangers of a fable, plainftiff muft shew that the fame were fixed. *Id. ibid.*

If leffe erea a partition, he cannot break it down without being liable to an action of waffe for he has joined it to the frank tenement. *Ms. 178.* Cokle’s cafe.

Shelves are parcel of the houfe, 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.


Pavement is a ftucture, for they ufe lime to fhinifh it. *Id. ibid.*

If the tenant suffers the groundliff to waife, in his de- fault of defence or removing the water from off them, or of dirt or dung or other muffices which lies or hangs upon it, the tenant shall be charged, for he is bound to keep it in as good cafe as he took it. *Ow. 43.* Strickichone v. Hatchman.

2. What waife shall be deemed excufable, and jufifiable.

It may be obferved in general, that waife which en- sues from the act of God is excufable: Thus if a houfe falls by tempeft, the tenant fiall be excufed in action of waife; but if it be uncovered by tempeft, and flands, then, if the tenant has fufficient timber to repair it, and does not, the leffe, if the leafe be made on condition of re-entry for waife, may re-enter, but not immediately upon the tempeft, for it is no waife till the tenant fuffers it to be fo long unrepaired, that the timber be rotted, and then it is waife. *Per Hull. Br. Cond. pl. 40.*

Likewife, if a houfe be abated by lightning, or thrown down by a great waife, it is not waife. *Id. ibid. c. a.*

So if apple-trees are torn up by a great wind, if leffe afterwards cuts them, it is not waife. *Bro. Walfes, pl. 39.*

If the banks are well repaired by the leffe, and the water notwithstanding waifers them, and surrounds their meadow, by which it is become rubbish, it is not waife. *2 Roll. Abr. 820. Contra, 20 H. 6. c. 1. b.*

The leffe 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 this, it shall excufe him in an action of waife. And yet the tenant of a fmall farm may be oblige to obey and execute this command. *Bro. Done. &c. 13.*

Tenant in tail may commit waife in houfes as well as in all other parts of the effate, notwithstanding any re- traint to the contrary, and no infufions can be fhewn, where a tenant in tail has been refrained from committing waife by injunction of the court of chancery. *Cof. Temp. Ed. L. Lib. 16.*

If tenant in tail grants all his effate, his grantee is difpauifable of waife; fofuch grantee’s grantee is alfo difpauifable; *Per Clerk J. 3 Le. 121. pl. 173.*

Aue!

If a man devides land to two in tail, and after the one devides dies without issue, by which the reversion in fee of one moeity reverts to the heir of the donor; but the other deicide is tenant for life of the whole, and after he commits waife, action of waife lies againft him by the heir of the donor for the one moeity. *5 Biflip. Abr. 469.*

But if the waife does not lie againft tenant in tail after poiffibility, for the greatneffe of the effate of inheritance which was once in him; and also, at some fay, be- caufe the effate was not within the flature at the creation. *11 Rep. 80. a.* Lewis v. Breake.

If lands are given to the husband and wife, and to the heirs of the one, to the husband, the remainder to the husband and wife, and to the heirs of their two bodies begotten, and the husband dies without issue: the wife shall not be tenant in tail after poiffibility; for the re- mainder in special tail was utterly void, for that it could 9 II never
never take effect. For so long as the husband should have ill-will, it should inhibit by force of the general tail; and if the husband die without ill-will, then the special cannot take effect, inasmuch as the issue which should inherit in his tail should be begetten by the husband; and to the general, which is larger and greater, hath frustrated the special, which is leijer; and the wife, in that cafe, shall be partition for wafe. 1 Idf. 28. 8.

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 counte-

Where a man leaves a wood which is unfit for great trees, the leijer cannot cut them. Hider's Rep. cafe 296.

Nevertheless, if the leijer cuts trees for reparation, and sells them, and after buys them again, and employs them in reparation, yet it is wafe by the faie. 1 Idf. 53. b.

So if leijer cuts trees, and sells them for money, tho' with the money he repairs the house, yet it is wafe. 6d. ibid.

As the cutting of timber-trees for repair by leijer, there is no difference whether the leijer or leijer cove-
nants to repair the houses; for in either cafe it is not wafe, if leijer cuts them. 66. 13. pl. 80. Ann.

If a house be proflated by enemies of the King, or such like, without default of the leijer, the leijer may re- build it again with the fame materials that remain, and may not endow the land to another to build it, but he must not make the house larger than it was. 1 Idf. 53. a.

So if the house was ruinous at the time of the lease, and fell within the term, this is not wafe in the tenant. 1 Idf. 53. a. Br. Worf., pl. 130.

But the leijer shall not cut trees to make a new house where there was not any at the time of the leafe. Hider's Rep. cafe 296.

So if a leijer suflers a house to fall for default of cov-
ering, which is wafe, he cannot cut trees to repair the house. Br. Worf., pl. 39.

And in general, if the tenant suflers the house to be wafe, he cannot justify the reparing of timber to repair it. 1 Idf. 53. b.

If a house be ruinous at the time of the lease, tho' the leijer is not bound to repair it, yet he may cut trees to repair it. 1 Idf. 54. b.

The tenant may likewise dig for gravel or clay for reparation of the house, tho' the foil was not open when the tenant came in, it is juftifiable as well as cutting of trees. 1 Idf. 53. b.

So with regard to a flable, if it fall without default of the leijer in the time of the leijer, the leijer may take trees of the heir to make a new flable, if it be of necessity. Br. Worf., pl. 87.

But if the fable fall in default of the leijer, in time of the leijer, he cannot in time of the heir cut trees to make a new flable. Br. Worf., pl. 87.

Cutting wood to barn, where the tenant has fufficient hedge wood is wafe. F. N. B. 59. (M.)

Where leijer for years has power to take hedge-boot by attachement, yet he may take it without attachement; for the power of taking does not take away the power which the law gives him. Dy. 19. pl. 115.

If leijer accepts his trees in his leijer, the leijer shall not have fire-boot, hay-boot, &c. which he should have otherwise; and the property of the trees is in the leijer himself. 4 Lar. 162. pl. 209. Sir Richard Lebow's cafe.

Yet it has been faid, that leijer for years, the trees being excepted, has liberty to take the threholds and lop-
pings for fire-boot; but if he cuts any tree, it shall be wafe, as well for the lopping as for the body of the tree. Nay 29. Rich v. Melephant.

A tenant that has packed 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 against him by the te-

If the leijer is bound in a bond of 100 l. and the lejeef cuts twenty oaks, and sells them, and pays the obli-
gation for his leijer, yet waife lies againft him for cutting them down, tho' the money was applied to the ufe and profi of the leijer. Dyer 56. pl. 38. Malvernor v. Spinage.

If A. hath common of cultivors in the wood of B. for house-boot, and he cuts down four trees for that purpoze, and in the working they prove unfit for the ufe, as for polls of a house, Gt. It was held, that A. cannot con-
vert this timber to any other ufe, Gt. neither can he sell, and buy other fit wood with the money; and he cannot enlarge the house with this timber, nor board the sides of the barn where which had mud walls, or the like, be-
fore. Clayt. 47. pl. 81. Curem Berksly, Earl of Pen-
broke's cafe.

Where a rent is granted in fee, with a provifor to en-
ter and retain till paid of the profits; the grantee upon entry cannot cut trees or do waife: Per three Juftices. 1 Lew. 171. Ijment v. Conly.

Cutting of dead wood is no waife. F. N. B. 59. (M.)

If a man leaves lands with general words of all mines of coals, where there is not any mine of coals open at the time of the demise, and after the leijer opens a mine, he cannot justify the cutting of cutting-timber-trees for making puncheons, cofer, roll-coops, and other utensils in and about the said mine, tho' without them he could not dig and get the coals out of the mine: And this is like a new lease for the term of the demise, for the reparation of which he cannot take timber upon the land; and it had been wafe to open it, if it had not been granted by ex-
press words: And it was faid by Hider, that the law had been the fame if the mine was open at the time of the demise. Hider's Rep. C. 196. Lady Davy v. Ajb-
with. And see Hart. 19, where the cafe is more clearly reported.

3. Who may bring an action of waife, and against whom it may be brought.

By flat. 13 Ed. 1. cap. 28, the action of waife is given to one tenant in common against another.

Where there are tenants in common for life, the one shall not have trefsaps of trees cut against the other, but shall have waife pro indivis, tho' they are only tenants for term of life, &c. but the one may have trefsaps of corn cut against the other. Br. Worf., pl. 79.

If one coproprator before partition makes reparation to another, the co-tenant can have no waife for trees wafe in the trees, wafle lies. 1 Rep. 49. a. Lidford's cafe.

Likewise, if two jointenants do wafe, and after the one enters into religion, wafe lies against the other, alone. 2 Roll. Abr. 528.

By the 20 Ed. 1. flat. 2. An action of waife is main-
tainable by the heir for wafe done in the time of his ance-
cestor, as well as for the wafe done in his own time.

This action must be brought by him that hath the im-
mediate eftate and inheritance in fee-simple or fee-tail, but sometimes another may join with him. 1 Idf. 53. a. 285.

It is faid, that the reverfion must continue in the fame flate that it was at the time of the wafe done, and not granted over; for tho' the reverfion taketh the eftate back again, the eftate is gone, because the eftate did not continue: But in some special cafes an action of waife shall lie; tho' the leijer had nothing in the reverfion at the time of the wafe done: for if a bishop makes a leafe for life or years and dies, and the leijer, the fee being void, doth wafe, the fuccefer shall have an action of waife. This is allowed, tho' the nature of the 20 Ed. 1. speaks of those that are inheritors. 1 Idf. 53. b. 356. a. 2 Roll. Abr. 528.

A tenant for life cannot have this action, but a par-
ten, &c. may have an action of waife, and the writ shall say, ad observandum est, for it is the dower of the church. If a tenant doth wafe, and he in reverfion dieth, the heir shall not have an action of waife for wafe done in the life of the ancestor: for he cannot for-
}
A bill, 
and and

In the House of Commons, a bill for an act of wafte done in the time of their precursors,


If a bill is made to A. for life, the remainder to B. for life, remainder to C. in fee; no act of wafte lieth against the first ejector during the estate in the mean remainder; in the second estate, he shall not have an act of wafte; but if the lector accepteth of a surrender of a lease after the wafte done, he shall not have his act of wafte.

It is said that if a tenant repairs before actus brought, he in reversion cannot have an act of wafte; but he cannot plead that he did no wafte, therefore he must plead the special matter. 1 Stat. 285. a. 283. a. 1 Stat. 306. 5 Stat. 110. 1 Cor. 628.

Likewise, if H. b. c. 5. where tenants for life, or for another's life, or for years, granted over their eftates, and take the profits to their own use, and commit wafte, they in reversion may have an act of wafte against them.

He in the remainder as well as the revoveror may bring this act, and every allience of the first leftee, mediate or immediate, is within this act. 5 Stat. 77. Pogue's cafe. 2 Stat. 302.

It has been said, that there are five wafts of wafte, that are punished by the Common law, as for wafte done by tenant in dower, or by guardian; three by statute, as against tenant for life, tenant for years, and tenant by the curtufy. It has been said however, that tenant by the curtuey was punifible for wafte by the Common law, for that the law created his eflate as well as that of the tenant in dower; and that the wafte done during the estate was punished against them. 1 Stat. 54. a. 2 Stat. 145. 290. 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 Gloucefter, 6 Ed. 1. cap. 5. which enacts, that "A man from henceforth shall have a writ of wafte in the chancerie against him that holdeth by law of England, or wife or wife for term of life, or for term of years, or a woman in dower." No act of wafte lay before the statute of Gloucefter, but against tenant in dower and guardian, and by the statute of wafte in dower is given against tenant by the curtuey, tenant for term of life, and tenant for term of years. Br. Wafl. pl. 88. Lord Coke says, a reason is required, (that seeing as well the eflate of the tenant by the curtufy, as the tenant in dower are created by act in law,) wherefore the prohibition of wafte did not lie as well against tenant by the curtuey as the tenant in dower, at the Common law; and the reason he affigns is this, for that by having influe the flate of the tenant by the curtuey, is originally created, and yet after that he shall do home alone in the life of his wife, which proves a larger eflate; and seeing that at the creation of his eflate in wafte, it is punishable against tenant by the curtuey, he shall have trespassed against him after his wife's deceafe; but in the case of tenant in dower, he is punifhable of wafte at the first creation of her eflate, 2 Stat. 145. But 2 Stat. 299. says, that at the Common law, wafte was punifhable in threepersons, (viz.) tenant in dower, tenant by the curtuey, and the guardian, but not against tenant for life or tenant for years; and the reason of the diversity was, for that by the law they created their eflates and interest, and therefore the law gave remedy against them; but tenant for life and for years came in by demise and lease of the owner of the land, and therefore he might in his demise provide against the doing of wafte by his leflce; and besides, if the court, was his negligence and default.

Shall have a writ of wafte? Neither this act, nor the statute of Marlbrige, doth create new kinds of wafte, but gives new remedies for old waftes; and what is wafte, and what is not, must be determined by the Common law.

2. Stat. 300. 301.

Against him] If two are jointtenants for years or for life, and one of them does wafte, this is the wafte of them both as to the place wafted, notwithstanding the words of the act are, (him holds), a Stat. 302.

Holds by the law of Englands; Here tenant by the curtuey is named for two caufes. 18. For that affect the common opinion was, that an act of wafte did lie against him, yet some doubted of the fame in respect to this word, (tent) in the writ, for that the tenant by the curtuey did not hold of the heir, but of the lord Paramount; as is more at large in this act, the wafte of ground sued thereupon doth recte this statute, 2dly, for that greater penalties were inflicted by this act than were at the Common law. 2 Stat. 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 Stat. 301.

If a tenant for life takes hufband, the hufband does wafte, the wife dies, the hufband shall not be punished by this law; but the words of this act be (a man that holds, &c. for life) and the hufband held not for life; for he was feized but in right of his wife, and the eflate was in his wife. 2 Stat. 301.

He shall have a writ for life by conveyance at the Common law, or by limitation of use, is a tenant within the statute. 2 Stat. 302.

Tenant for years of a moieties, 3d or 4th part, pro indivis, is within this act; and if it is a tenant by the curtuey, or other tenant for life of a moieties, &c. 2 Stat. 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 cultum, dower ad utrimcum ecclesium, dower ex officis patriae, and dower de la plus beale; and against all these the action of wafte did lie at the Common law. 2 Stat. 302.

If tenant in dower be of a manor, and a copyholder thereof commits wafte, an action of wafte lies against tenant in dower. 2 Stat. 303.

A tenant by the curtuey lies against 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. b. Don 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 wafte, the he comes en le fyle, yet action of wafte lies against him. 2 Real. Abr. 826.

So if a man diffifies the tenant for life, and does wafte, yet action of wafte lies against the tenant for term of life; for he may have his remedy over against the diffeitor. Br. Wafl. pl. 88.

Likewise, if an eflate 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 wafte. 1 Stat. 54. a. (f.)

But an action of wafte does not lie against tenant by statute merchant, efgent or staple, because it is not an eflate for life or years, and the statute mentions those who hold in any manner for life or years. Contr. Fitch. Nat. 58 H. and there said, that in the Regifter it is a writ against him. 6 Rep. 37.

Some books give the reason of it to be, because the confour, if he commits wafte, may have a tenable facias and cannot be removed, shall be recovered in the debt. Finc. Nat. 58. K. (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 wafte, the lefsee for life shall not be punished for it. 2 Stat. 303.

If lefsee for years makes a lefsee of one moiety to A. and of the other moiety to B. and A. does wafte, the
action shall be against both; for the waife of the one is
the waife of the other. 2 Brompt. 238. An'.
An action of waife lies against a devisee, and the writ
must opposite it ex actione, for it is within equity of the
No action of waife lies against a guardian in socage,
but an action or trespass. 1 Inf. 54. S. P. cent.
F. N. B. 59. (E)
If an estate of land be made to baron and feme, to
hold in fiest during the coverture, &c. if they waife,
the feoffor shall have writ of waife against them. Lit.
46, 781.
If feme lefse for life marries, and the husband does
waife, action lies against both. 2 Roll. Abr. 827.
And, if in the above cafe, the husband dies, action
of waife lies against the feme for the waife he comitted.
Id. Bid. But if tenant in dower marries, and the husband
does waife and dies, the feme shall not be punifhed for this.
Id. Bid.
Likewise, if baron and feme are leases for life, and
baron does waife, and dies, the feme fhall be punished in
waife, if the agrees to the elate. Id. Bid. 1 Inf. 54.
Ket. 113.
But if the waives the elate, fhall not be charged.
2 Roll. Abr. 827.
So upon lease for years made to the baron and feme,
waife lies against both. Id. Bid. And
If baron and feme are joint-leases for years, and baron
does waife, and dies, action of waife lies for this against
the feme. Id. Bid.
Upon lease for life, to baron and feme, waife lies
against both. Id. Bid.
Likewise, if feme commits waife, and then marries,
the action fhall be brought against both. Id. Bid. And
the writ may be Quod feurant waifian, or Quod uer,
If baron, befoined for life of his wife in right of his
wife, does waife, and after the feme dies, no action of waife
against the fume in the elate, if he were feized only in right of his wife, and the frank-tenant was in
the feme. 1 Inf. 54. 5 Rep. 75. 6.
But if the baron, poiffioned for years in right of the
feme, does waife, and after the feme dies, action of waife
lies against the baron, because the law gives the
term to him. 1 Inf. 54.
A waife lies in fee in the fife of hisfelf and his
wife, and to his heirs; there were underwater on the
lands, which were usually cut at 21 years growth;
A. suffered them to grow 25 years, and then died; per
69 est cur'. This fhall bind the wife for where the law
limits a time for tenant for life to fell underwood, if it be
done at that time, it fhall not be felled by a tenant
for life afterwards, but it fhall be waife. Cad. 425.
pl. 6. An'.
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 execu-
tive, and died; the cut down the trees; adjudged, that
an action was maintainable; for though the trees were
once chattels in the leffe, yet by purchasing the inherita-
tion they are again united unto the land. Ow. 49. An'.
4. In what cafes in general, waife may be refraigned
by injunction in equity.
If a tenant for life plant wood on the land, which is
so poifonous a quality that it destroys the principles of
vegetation, without an express power in his lease, where
it is usual to have fuch powers, it may be confidered as
waife, and the court of chancery may grant an injunc-
tion. 5 Barb. Abr. 493. MISS. Rep. Marquis of
Poulu v. Darrell, Can'.
If there be leffe for life, remainder for life, the rever-
ion or remainder in fee, and the leffe in pollution waife
the lands, though it is not punifhable for waife by the
Common law, by reafon of the mean remainder for life;
yet he fhall be refraigned in chancery, for this is a partic-
ular mischief. 1 Peterv. 554. S. P. cent. 4
But if fuch leffe has in his leafe an express clause of
without impeachment of waife, he shall not be injudged in
equity. 1 Vern. 23.
If A. is tenant for life, remainder to B. for life, re-
mainder to ftrife and other fons of B. in tail male,
remainder to C. in tail female, and R. (before the birth
of any fons) brings a bill againft A. to flay waife, and 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 defmutter will be over-ruled, because waife is to
the damage of the publick, and B. is to take care of the
inheritance, if he does not take care of the trees, it is a par-
ticular intereft himself, in cafe he comes to the effate.
On a motion for an injunction to flay a jointrofe, who
was tenant in tail after poiffibility, &c. from committing
waife; it was urged, that the being jointrofe within the
11 H. 7. ought in equity to be refraigned from cutting
timber, that being part of the inheritance, which, by
the statute, is refraigned from aliening; and the court
granted an injunction againft wilful waife in the fie of
the houfe, and pulling down houfe. 1 Inf. Cock
Waife.
As a tenant a jointrofe, who had a covenant that her
jointure should be of fuch a yearly value, which fell short,
though her elate was not without impeachment of waife;
yet the court would not prohibit her committing waife,
fo far as to make up the defect of her jointure. But
quare, if an action of waife be brought againft her, if
chancery will injudg the action. Id. Bid. Carew v. Ca-
ver.
It seems to be a general principle however, that tenant
in tail, after poiffibility, fhall be refraigned in equity from
doing waife by injunction, &c. because the court will
never fee a man disinherit; before per chan. Finch.
And he took a divifedry where a man is not punifhable for
waife when the tenant in tail is right of the fee.
Vuln. 1 Dowlard's cafe, 24 Car. 1. Ruled by lord Roll, to warrant
that difinhibition, 2 Shaw 69. pl. 53. Airsalb v. Bubb.
A. deeded 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 his
death bought by B. the court gave him leave to cut down timber for the payment of the
legacies, though it was opposed by the tenant for life and the devisee over, he making satisfaction to
the widow for breaking the ground by carriage, waife,
2 Vern. 152. Cigaret v. Cigaret.
So in a cafe this created a term for 500 years, in truth
for himself and his wife for life, remainder to trustees
for payment of debts and annuities; and by will devolved
the reversion thereof to A. for life, without impeachment of
waife, remainder to his ftrife and other fons in tail male,
with remainder over; and A. being in want, the court
gave him leave to cut down timber to the value of 500l.
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 elate. 2 Vern. 218. Affin-
Vale v. Leigh a/.
It appears that waife without impeachment of waife takes
off all refraignment from the tenant of doing it; and he may
in fuch cafe pull up, or cut down wood or timber, or
dig mines, &c. at his pleasure, and not liable to any
action. Plowd. 135.
But though the tenant may let the houfe be out of re-
pair, and cut down trees, and convert them to waife
life, yet where a tenant in fee fimpie made a waife for years
without impeachment of waife, it was adjudged that
the lefior had fuch property, that if he cut and
carried away the trees, the leffe could only recover da-
mage in action for the trepaf, and not the trees: Also
it hath been held, that tenant for life, without im-
peachment of waife, if he cuts down trees, is only
 exempt from an action of waife, &c. 11 Inf. 82. 1 Inf.
220. 2 Inf. 145. 6 Rep. 63. Dry 145.
And
And if the words are, to hold without imprisonment of
waifs, or to hold any one or all of the leaff, the leaff
being left in the trees, if the leaff cut them down, or bring
trover for them. 7 Id. 574.

In many cases, likewise, the court of chancery will
refrain waffes though the lease, &c. be made without im-
prisonment of waife. For

The clause of imprisonment of waife, never was
ever deemed to allow the destruction of the estate itself,
but only to excuse for permiffive waife, and therefore
such a clause would not give leave to fell or cut down
trees ornamental or felling of a house, much lefs to
destroy or demolifh a house itfelf. Thir.

A bill was brought by remainders to restrain tenant
for life, from the imprisonment of waife, from cutting
timber in Woodward park improper to be felled; and Lord
Chancellor granfed the injunction to reftrain the defen-
dant from cutting timber, which ferved for flriett or
ornament to the house, or which grew in lines, avenues,
or rideings for ornament, and alfo any other timber in the
park, which was not of proper growth to be felled. And
his lordfhip in this cafe declared, that courts of
equity had in this refpect eftablifhed rules much more re-
strictive than thofe of the Common law; which gave te-
nant for life, without imprisonment of waife, as large
a power over the timber, as tenant in fee-fimple, that
timber might be felled, with which the Whiffip of
Likewife Where A. upon his marriage fettled lands to
the use of himfelf and M. his wife, and the heirs of their
two bodies; afterwards A. died without issue, M. mar-
ried D. the defendant, being then tenant in tail after
poftibility of issue extin(v: And M. and D. having felle
four trees in a grove that grew near, and was an orna-
ment to the manfon-house, and having an intention to
fell the ref; the plaintiff, to whom the lands did belong
in remainder, brought his bill to reftrain M. from felling
theef trees, and to have an injunction to fay the committ-
ing of waife. This caufe was referred, and if the parties
could not agree, then to be fettled again. The Lord of
Nottingham difcovered his inclination fortr to granf

So where a leafe was made by a bifhop for 21 years,
without imprisonment of waife, of land that had many
trees upon it, and the tenant cut down none of the trees
till about half his term expired, and then began to
then to fell the trees; the court granfed an injunc-
tion. For though he might have felled trees every
year from the beginning of the term, and then they
would have been growing up again gradually, yet it is unfa-
convenient that he SHOULD let them grow tilltowards the end
of the term, and then sweep them all away. For though
he might have committed waife, yet this court would not
grant the exercise of that power. 2 Feem. 55. Abraham
v. Bobb.

So in the cafe of tenant for life; remainder to the fift
for life, without imprisonment of waife, with remain-
der over; the fift for, by the leave of the cafe of tenant
for life, comes upon the land, and fells the trees; albeit
he could not in that cafe be punifhed by an action of
waife, yet he was injuried by this court. 7 Id. Ibid.
Likewife, where A. on the marriage of his elfeott for,
in consideration of 1000 l. portion, fettled (inter alia)
Rufy Cafle on himfelf for life, without imprisonment of
waife, reftaining his fettlement for life, and to his hift and
other refidues in tail male; afterwards, having taken fome
defpoffeffion to his fon, he got 200 workmen together,
and of a fudden defpoffeffed the caife of the lead, iron, glas,
doors, and boards, &c. to the value of 3000 l. And
the court, on the fon's filing his bill, granfed an injunc-
tion to fay the committment of waife, being the caife in
the cafe of tenant for life, without imprisonment of
waife, not only the injunc-
tion to continue, but that the cafe fhould be reprieved,
and put in the fame condition it was in; and for that
purpofe a commiffion was to affife to affertain what ought
to be reprieved, and a malter to fee it done at the charge
and expence of the father, and the fon have his caife.
2 Feem. 738, 739. 1 S. & T. 161. S. C. Vane v. Li. Ber-
nard.

Vol. II. No. 135.
bill in equity against the executor and heir, praying an accounting of the funds and, and alleged that their customary tenants were as copyhold tenants, and that the freehold was in the plaintiff as lord of the manor and owner of the field; and that the manner of parcelling the premises, was by surrender into the hands of the lord, to the use of the suffectree. It was infilled for the defendants, that it did not appear, that the tenant in the third was, to hold the estate in domaini feodum conueniational, &c. without which words, it was infilled, that there could be no copyhold, as had been adjudged in Lord Ch. J. Holt's time. And Lord Chan. Cooper said it would be a reprobate to equity to say, that where a man has taken another's property, as oat, or timber, and dispelled of the same, he is not to cut it down, and dies, there should be no remainder. P. W. Rep. 496. pl. 112. Bishop of Winchester v. Knight.

Converting a broughmow into tenements of a greater value, was waft, notwithstanding the molestation, by reason of the alteration of the nature of the thing and of the evidence; and so refolved on a trial before Hale, Ch. J. and the jury gave the verdict accordingly, and 100 marks single damages, which being trebled, amounted to 200l. which the Chancellor compelled B. to take.

Leilee for 500 years, of land of about 200l. a year, built several houses, and thereby improved the rents from 200l. a year. He lived 40 years, and quietly enjoyed the lease for 300 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 said ground. He brought a bill setting forth, that such building could not be accounted any waft, but rather a melioration and improvement of the land. The defendant pleaded the statute by which provision is made for bringing actions of waft. But the court overruled the plea, and ordered the defendant to answer and to give satisfaction. Fin. Rep. 135. Wild v. Sir Ed. Stradling.

An under-tenant of a jointreets commits waft in fprmion, fo as at law the waft was forfeited, but infilled that he had improved the estate from 40l. to 60l. per annum, and offered to take a lease of it at that rent for 50 years, and to answer the value of the timber on a quantum demunificat. Quere. 2 Vern. Rep. 203. pl. 247. Lige v. Smith and Leib.

One fee'd in fee'd lands in which there were mines, all belonging to one proprietor, by a deed conveyed these lands, and all mines, waters, trees, &c. to trustees and their heirs, to the use of the grantor for life, (who soon after died) remainder to the use of A. for life, remainder to his first, &c. ten in tall male successively, remainder to B. for life, remainder to his first, &c. ten in tall male successively, remainder to his two daughters C. and D. and the heirs of their bodies, remainder to the grantor in fee. A. and B. had no issue, and C. one of the fitters died without issue, by which the heir of the grantor as to one moiety of the premises, had the first estate of inheritance: A. having cut down timber and sold it, and threatened to open the mines, the jointreets, being of Leib. for the remainderman, by the death of one of the fitters without issue, brought his bill for an account of the moiety of the timber, and to pay A.'s opening of any mine: And it was adjudged the right to this timber belongs to thefe, who at the time of its being severed from the freehold, were fee'd of the first estate of inheritance, and the property secures vested in them. P. W. 243. P. W. 248. P. W. v. Beulah.

A bill was brought against the executors of a jointreets, to have a satisfaction out of fees for permissiv' waft upon the jointure of the tenailles. &c. But by Cooper J. the bill must be dismissed, for here is no covenant that the jointreets shall keep the jointure in perpetuity, and in such case, if without some particular circumstances, there is no remedy in law or equity for pertinent' waft after the death of the particular tenant. Fin. Abr. tit. Wolf, p. 573. cites MSS. Rep. 2. Gen. l. in Can. Turner v. Dicc.

It has been said in equity, that remainderman for his hall, in waft, recover damages in proportion to the wrong done to the inheritance, and not to proportion only to his own estate for life. 1 Com. 132. Brown v. Brown.

A. being tenant for ninety-nine years, if he should be a long live, with trustees to preferieve remainder to his first, and other remoter remaindermen, to B. and A. and B. before issue born. A. fell timber. The charter-

If A. had had an estate for life, and no limitation to trustees, the plaintiff could have had no remedy, because tenant for life might have barred, or surrendered the whole estate to the remainder-man: But here the freehold was in the trustees; and the possession of leilee for years is in law the possession of the owner of the freehold. The trustees however would not here have maintained waft, because the Common law gave no action of waft, but to the owner of the inheritance; and the statute of Glawesfer gives the waft to the same person; but the trustees are in no other condition than remainderman for life. Trustees may bring a bill in equity to hayf waft, before the contingent remainderman comes in off. If the trustees had brought such a bill, the court, as to trees actually cut, would have obliged them to have made satisfaction in money, to have been secured to attend the contingent ufe. Where there is tenant for life or years subject to waft, and timber is blown down, the owner of the first remainder in tail vested shall have it; for the Common law considers an estate in contingency as no estate: and when the tree is severed the property vests 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 wasted, which would be in justice to the remainder over; but such a remainder-man of the inheritance after the intervening estate may have tree 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. MSS. Rep. Gard. v. Gorton, 25 Geo. 2.

Th' an injunction is a proper remedy, yet it has never been brought a bill for that purpose, and cannot be maintained afterwards: And th' a recovery was suffered after waft done, it was to the use of plaintiff and his heirs, which is no new ufe, and ought not to bar waft in equity. It is true, action of waft done with the person, but the waft will not lie at law, as the person committed it is dead, yet he may have relief in the court. It has been held in all cases of fraud, the remedy never dies with the person, but relief may be had against the executor out of affets; and this court will follow the affets of the party liable to the demand; and confusion in this court is the same as fraud. Decreed a satisfaction to be made to the plaintiff for the value of the timber cut, and the remainderman may recover the fee of the affet; but would not give any interfet, as that would be carrying it too far.

5 Bac. Abr. 499. For more learning on this subject, see 5 Bac. Abr. and 22 Fin. Abr. tit. Wol. v. Wol.

Claitself-heel. (from the Sax. Wesc-leah, i.e. health be to you) A large liver cup or bowl, wherein the Saxons, at their entertainments, drank a health to one another, in the phrase of wesc-heel: And this wafel or wesc-heel bowl, was set at the upper end of the table in religious houses for the ufe of the abbot, who began the health or pecham chartatis to strangers, or to his fraternity. Hence cakes and white bread, which were called wesc, or wesc-heel, were called wafel or heel. Matt. Parf. 151.

Claitfloy, Were a kind of thieves so called; mentioned among robbers, draw-latches, &c. Stat. 4 Hen. 4. c. 27.
W A T

Watches and Ward. Watching is properly intended of the constables and watch for this day time. 1 T. 1 c. 246, Stat, 13 Ed. 1, cap. 4. The peace of the realm enacts, that "in great walled towns, gates shall be shut from sunset to sun-rise; and no person shall lodge in the suburbs from 9 of the clock until day, unless his lord shall answer for him; and the bailiffs of the towns, every morning at their gallery, shall make enquiry of all persons lodged in the suburbs or out of the towns, and shall call to account those who have lodged or received strangers, or suspicious persons; and a watch shall be kept yearly, from the feast of Ascension to St. Michael in manner following, viz. in every city 6 men shall keep at every gate; every borough shall have 12, and every township and stately, acc. to the number of inhabitants, who shall watch from sunset to sun-rise; and every stranger passing by them shall be arrested till morning; and if he do not appear to be a suspicious person, he shall be discharged; otherwise he shall be delivered to the sheriff, who shall keep him till he is duly acquitted: And where any person will not obey the arrest, he shall be followed with hue and cry by all the town, and the towns near; and he hue and cry shall be made from town to town, until he be taken and delivered to the sheriff as aforesaid.

In false imprisonment the defendant justified that he was in the hall at home, and that he appointed the plaintiff to watch there, and because he refused he put him in the stocks. And upon this it was demurred, as, because the defendant did not show that the plaintiff was an inhabitant there; and that he cannot appoint a stranger to watch, neither by this statute nor the statute of 5 H. 4, cap. 3. d. 8., it was moved that the complainant cannot impose one for refusing to watch, but must complain to a justice of peace, and he may inflict punishment upon the refuser. 3dly, That he ought to have it was the plaintiff's turn to watch. The court held, that for the first cause clearly, the plea is not good; but for the second, it moved that the complainant might impose one for not coming to watch. General counsel for the defendant for the first cause it was adjudged for the plaintiff. Cela, Eliz. 204, p. 37. Mich. 32 & 33 Eliz. in B. R. Str etton v. Brown.

Mr. Servant Haukins says, 2 How. P. C. 80, cap. 13, s. 4. That it has been resolved, that a stranger, who is not an inhabitant of a town, cannot be compelled to keep watch by virtue of the statute of Winstchyer, to keep watch in it; but says, it seems to be agreed, that every inhabitant is bound to keep it in his turn, or to find another sufficient per to keep it for him: From whence it follows, that he is indubitable for a refusal; but it is not a ground of an action is committed by the confable till he content to do his duty.

S. was indicted for that he on the 19th of June, &c., and before, being an inhabitant, was summoned to watch with B. a constable, but made default. Exceptions were taken, first, because he did not pay that he continued to be so. Secondly, That notice was given him to watch within the parish. Thirdly, Because it was that he did not watch with B. a constable; whereas he should have paid that he did not watch at all; for possibly he might watch the same night with another confable. It was answered, that this indictment is founded at Common-law, and not under the statute of Winstchyer. And as to the second, there may be an extraparochial place where the confable is to watch. But nothing was said to the third exception. The court bid them plead to the indictment; for they would not qualify it. 5 M. 392. P. 82 & 83. B. The King v. Stanmore.

For the watch in London, see Stat. cit. Lond. 13 Ed. 1. ch. 5.

Justices of peace shall have power to punish the offenders, 2 Ed. 3. c. 6.

Commissioners to apprehend malefactors and suspected persons, to Ed. 3. ch. 2. c. 3. Art. 1, &c., Petry watch kept on the coasts, 46 Ed. 3.

Watch shall be kept on the coasts as formerly. 5 H. 4. c. 2.

Persons aggrieved by affidavits for watch and ward may appeal to the Mayor, &c. 11 Gis. 1. c. 18, f. 12.

Watchets, made by artificers, are to have the maker's names, &c., under the penalties of 9. Stat. 15 & 16. 3. c. 28. See Clocks and Watchets.

Watches, in which are included navigable rivers and streams; for the statutes relating thereto, see His Barts.

Water-bailiff. An officer in port-towns, for searching of ships. Afo 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 power of disposing of the goods at his table, and arrails men for debt, or other penalties or criminal matters upon the river Thames. 28 H. 6, c. 5.

Watch-courts. A water-courts does not begin by precept, nor yet by affiet, but begins ex jure natura, having taken this course naturally, and cannot be averred. Per Watchell, 3 Busl. 343, in cause of Sury v. Pigget.

If one hal 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. His. 52. Mich. 3 Car. B. R. Duncomb v. Randall, in Com. 34, decided, that the 8th of May 18. W. & M. he was punished of a house, from whence the water per & through the garden of the defendant current debits & debts, &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 poached of it, but only that debts, the court ordered it to be put into the paper again; & aliotherwise and afterwards this being a poaching action it was ruled to be well enough. Sim. 316. P. 48, W. & M. in B. R. Jackman v. Savage.

In case the plaintiff declared, that he was poached of an ancient fosse in Com. 8. that a certain water-courts at D. current Deb et aliothe defet in quondam ten, and as often as the water overflowed ran into the plaintiff's house for his necessary use, and that the defendant dog the ground so far the wall and placed a cifer there, so that the water was diverted and did not overflow from such a day, whereby the plaintiff lost his necessary water. After verdict for the plaintiff it was moved, 8th. That there was no terminating act, and that it was not averred that it used to overflow. 3dly, Neither is there a sufficient diversion alleged; but resolved that it is not necessary to allege a terminus a quo, and that the other informations are cured by verdict; and judgment for the plaintiff. Combe. 35. Mich. 5 W. & M. in B. K. Prickman v. Tripp. Sim. 305, pl. 4. C. accordingly; and as to the first objection of the want of a terminus a quo it is not necessary in this case, he had flying, 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 re- cessary, otherwise the jury could not know that there was such a current, if it be not flown; but per Cur. 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 current & debit 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 cause of the diversion, which the court might judge a sufficient cause; fed non allocatur; and after it was adjudged for the plaintiff, and that the court had acted after a verdict, the judgment in the cause was reversed, and ordered 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 so sided by the verdict. Sim. 359. pl. 25. Mich. 5 W. & M. in B. R. Jackman v. Tripp. In cause of diverting a water-courts which the plaintiff had to a mill, he counted that the defendant intending
to deprive him of the profit of the said mill did divert the water ab antiqua curta fun, per quod he could not molere to lift, &c. after verdict it was showed, that they did not stay that he diverted the water from the mill, but from its ancient source, for good, &c. and that molere was infe-

that the plaintiff had his judgment ; and they held, that the word (molere) being infeible, no damages could be given for it, and that the declaration had been good if that part had been left out. 5 Mod. 206, Pajot, B. 13, R. Richards v. Hill, Stow 27 Vic. Abr. 515—528.


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Were, (Sax. trens) is the term paid in ancient time for killing a man, when such crimes were punished with pecuniary mulets, not death; or it is preterit redemptions of the offender. Leg. Ed. Conf. cap. 11.

Wereclaf, (from the Sax. were, i. e. preterit capitis homicide = a murderer, burglar,) was where a man was slain, and the price at which he was valued not paid to his relations; but the party denied the fact; when he was to purge himself by the oaths of several persons, according to his degree and quality, which was called wereklæfe. Leg. H. c. 12.

Wergelæfe, (i.e. wergoldes,) the price of homicide, paid partly to the King for the loss of a subject, partly to the lord whose vassal he was, and partly to the next of kin of the perdon slain. LL. H. 1.

Welfarolauge, Was the law of the West-Saxons. See Mercenage.

Wesmiffler, Was a monum. riform, was the ancient seat of our kings, and is now the well-known place where the High Court of Parliament, and Courts of Judicature sit. It had great privileges granted by Pope Nicholas; among others, at amphil in perpetuum Regiae constitutionibus fuit fuga repugnatorum regiali inflationis. Ep. Leg. ad pro. Edw. Tom. 3. b. 1229. See (C.) and (IV.) 255.

Rules for government of the 12 wards in Wesminster, 27 Ed. printed in 1713.

The inhabitants of Wesminster excused from serving on juryes for Middlesex, 7 & 8 W. 3. c. 32. f. 9.


For building a square in Dean's yard, 29 G. 2. c. 54.

Eighty confables to be appointed yearly in Wesminster, 29 G. 2. c. 25.

Penalties on persons refusing the office of leet jurymen or confables in Wesminster, 29 G. 2. c. 25. f. 4 & 5.

Houses and shops cannot be continued longer than three years, 29 G. 2. c. 25. f. 9.

Penfors may act as commissioners of the Land tax in Wesminster, who have leavehold estates of 20l. per Ann. 29 G. 2. c. 26. f. 4.

The way from Cbering-chores to the house of parliament to be widened, 29 G. 2. c. 30.

For enabling the dean and chapter of Wesminster to grant a long lease, 29 G. 2. c. 26.

For re-building the terrace and water-gate at York Buildings, 29 G. 2. c. 90.

For widening the frett from Cockspur Street to Spring Garden, 30 G. 2. c. 34.

Wheeler, Fishing vessels not to proceed thither till the 10th of March 15 Car. 2. c. 15.

Whales, Whale-bone, fins, fat, and blubber, The King's prerogative in whales, 17 Ed. 2. f. 1. c. 11.

Whale-fins, bones, oil, or blubber, where to pay double aliens custom, 12 Car. 2. c. 18. f. 5.


Plantation whale-fins to pay as Greenland, 10 & 11 W. 3. c. 21. f. 31.

Whale-fins, &c. imported by the Greenland company not charged, 10 & 11 W. 3. c. 25. f. 17. 5 G. 2. c. 28. f.


Penalty on matters of ships importing foreign cut whale-bone, 4 Ann. c. 12. f. 6.

Encouragement of the whale fishery in the gulph, &c. of St Laurence, and on the coasts in America, 4 G. 3. c. 29.

Wharf, (wobra,) is a broad plain place near a creek or bight of the water, to lay wares on, that are brought to or from the water. 12 Car. 2. c. 4.

Whartage, (toberages,) is money paid for landing wages, sails, rope, or for flapping or taking goods into a boat or barge from thence. It is mentioned in Stat. 17 H. 8. c. 26. and 22 Car. 2. c. 11. &c.

9 K
...is the word occurs in the laws of King Canute, c. 27.

William, A. "A. C."

WILL

WILL

William, 1. A Saxon word, derived from wiht, or wight, which signifies alive, and grew, prospers, and denotes the overture of a wood, according to Svelopin: That wit, in Saxon more truly signifies wit, and so it may more properly intend an overture of the highways. Cowell, edit. 1727.

Wilt foul, The taking of pheasants and partridges with nets on the ground of another prohibited, 11 H. 7. c. 17.

Wilt, Taking the eggs of falmons and swans prohibited, 11 H. 7. c. 17.

Wilt, Taking of young horsens prohibited, 19 H. 7. c. 11.

Killing wild foul in June and July prohibited, 25 H. 8. c. 11. repealed, 3 & 4 Ed. 6. c. 7.

Taking their eggs prohibited, 25 H. 8. c. 11. f. 3. & 4 Ed. 6. c. 7. f. 2.

Buying and selling pheasants and partridges (except by the officers of the highbond) prohibited, 32 H. 8. c. 8.

Taking the eggs or birds of hawks, made felony, 32 H. 8. c. 11.

The ducks, &c., between the first of July and first of September prohibited, 9 Ann. c. 35. f. 4.

Time limited between 1 June and October, 10 Geo. 2. c. 32. f. 10.

See Game.

Will, Or lath will and testament, (testamentum, ultima voluntate). A testament is a just and compleat declaration or sentence of a man's mind, or lath will, of what he would have to be done with his estate after his death; Or, according to some, a will is a declaration of the mind, either by word or writing, in disposing of an estate, and to take place after the death of the tefator. Testa. de leg. fac. Testamentum. Sun. in part. 1. f. 2 & 4 Scip. Adv. part 4. fac. Testamentum. Corb. 38. Lec. V. Lib.

It is in Latin called testamentum, i.e. testamentum, the witness of a man's mind, and to devie by testament, is to speak by a man's will, what his mind is to have done after his death: And it is sometimes called a will, or lath will, for theses words are synonimes, and are promiscuous used in our law: However, by the civil law, it is only said to be a testament when there is an executor made and named in it, and when there is none, it is but a codicil only; for a codicil is the same that a testament is, excepting that it is without an executor; and a man can make but one testament that can take effect, but he may make as many codicils as he will. Id. Hol. 1 lbf. 111. Sun. part 1. f. 5.

And by the common law, where lands or tenements are devised in writing, although there be no executors named, yet that is properly called a lath will; and where it doth concern chattels only, a testament. 1 lbf. 111.

He who makes the testament, is called the tefator; and when a man dies without a will, he is said to die intestate. Scip. Adv. part 4. fac. Testamentum

A testamentary schedule without witnesses, or an executor, has been declared a will. 2 Ed. Ryn. 1282. Petrel v. Bercerf.

There are two forts of wills or testaments: First, in writing, which is, where the mind of the tefator, in his life-time, by himself, or some other by his appointment, is put in writing: Or, secondly, by word, or without writing, which is, where a man is sick, and for fear that death, or want of memory, or speech, should force him, that he should be prevented, if he flaid the writing of his testament, defive his neighbours and friends to help him in writing the will, and then decry it in some manner, perhaps by word, before them: And this is called a nuncupative or nuncupatory will or testament: and this is after the death proved by witnesses, and put in writing by the ordinary, is of as great force for any other thing, but land, when at the first in the life of the testament it is put in writing. 1 lbf. 111. Perk. 476. Will part 1. 12.”

A co.
A codicil is also in writing or by word, as a will or testament is.

The civilians have other divisions of wills and testamentary powers, solemn and uniform, privileged and unprivileged, whereas the Common law makes no mention. 4 Ed. 3d.

1. Who are capable of making a will or testament.
2. What are the regestors, to constitute a good will.
3. Of wills to pass lands and revenues.
4. In what language a will may be written, and of the circumstances of signing, sealing, attestation and publication.
5. Of re-publishing of a will; what shall amount is a re-publication, and when a re-publication shall make a de-vice good.
6. What shall be a sufficient proof of a will, and in what cases devises, legates and creditors may be admitted to prove a will.
7. Of unavocative wills.
8. Of the nature and effect of a will or testament and of a codicil; and how wills shall be confirmed.
9. Of revoking 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 statute of 32 & 33 H. 8. But by special custom in some places, where land is devisable by custom, he may devise 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. Whinb. part 11. felt. 2.

If he or she hath attained to the full day of 14 or 12 years, the testament by him or her in the very last day of their several ages aforesaid, 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 is good and effectual. Whinb. part 11. felt. 2.

And yet some say an infant cannot make a will of his goods and chattels until he be of 18 years age. 1 Sof. 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 femne coehert 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, 32 & 33 H. 8. 4 Rep. 51. Br. Testa-ment. 13. But of the goods and chattels she has, as ex-ecutrix to any other, she may make an executor without her husband's consent: for if she does not so, the administration of them shall be granted to the next a-kin to the deceased testatrix, and shall not go to the husband. 12 H. 7. c. 24. Perk. felt. 522. Fitz. Extc. 46.

But even of them she can make no devise with or without her husband's leave, for they are not devisable; and if she devises them, the devise is void. Plead. 526.

In some things due to the wife, where she was not poffed over during the marriage, as things in action, and the like, the 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, the may make a will without her husband's leave, others doubt of this; however all age, 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 husband has either by her or otherwise, she may not make a will without the licence and consent of her husband first he must consent to the same. She is also in equity able 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 suifters the will to be proved, and delivers the goods accordingly, in this case the testament is good, and yet 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 life-time, 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 H. 7. c. 24. 15 Ed. 4. 11. Perk. felt. 521. Fitz. Extc. 28. 109. Br. Testa. 11.

Likewise, a wife, whose husband is banished by act of parliament for life, may make a will as a feme sole. 2 Vern. 104.

A mad or lunatick person, during the time of his infancy, cannot make a will of lands or goods; but such a one as hath his lucida intervalla, clear or calm intermissions, may, during the time of such quietnes and freedom of mind, make his will, and it will be good. Swinh. 1. f. 3.

So also, an idiot, i.e. such as cannot number twenty, if he be of the age he is, or like, cannot make a will or dispose of his lands or goods; and although he make a will, reasonable, andenable will, yet it is void: But such a one as is of a mean understanding only, that has gregium caput, and is of the middle sort, between a wise man and a fool, is not prohibited to make a will. II. part 11. f. 4.

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. II. Ibid. part 11. f. 6. 6 Rep. 23. Mar-quis of Wincheter's case.

So also it feems in a drunken man, who is so excessively drunk that he is deprived of the use of his reason and understanding, 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. Whinb. part 11. f. 1. and felt. 6.

A woman of such a nature that by reason, or through in- capacity, cannot make a will; but a man who is for bad custom, may by writing or signs make a will; and to may a man who is deaf or dumb by nature or accident. II. part 11. f. 1. & 10.

And so also may a man that is blind. II. part 1. f. 111.

But an alien enemy, perfons convicted and attainted, and recusant convict, cannot make a testament of lands or goods. Wood's Iftit. 335.

Neither may the heir, 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 soccession. Fitz. Abr. Testa. 1. Perk. 458.

A traitor attainted, from the time of the treason committed, 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. Whinb. part 11. f. 12. 5 & 6 Ed. 6. c. 1. f. 6.

A man who is attainted or convicted of felony cannot make a testament of his lands or goods, for they are forfeited; but if a man be only disabled, and dies before the attainted, his will is good for his lands and goods both in all respects and duties, and will stand without his arraignment, but stands mute, tinct, in this case his lands are not forfeited, and therefore he may make a will of them. Whinb. part 11. f. 13. II. B.

If a man kill himself, his will as to his goods and chattels is void, but as to his lands is good. Plead. 281. Hales v. Petit.
W I L

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. Stubb. part 11. f. 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 will he be good against the testator himself, and all others but such persons only, Wood, vol. 791.


And note also, By the civil law the wills of divers others, as excommunicate persons, heretics, ufeurs, inchoent persons, sodomites, libertes, and the like, are void, but the wills of such persons, at least as to their lands, are good by the statutes 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 fairly, 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 requisities to constitute a good will.

To constitute a good will it is necessary,

1. That the testator be a perfon legally capable of making a will.

2. The second thing required to the making of a good testament, is, that there be a perdon to take, and one that is capable for in all gifts by devise, or otherwise, that are good, there must be a donee in effe, and not pipe only, and one that shall have capacity to take the thing given, when it is to vefl, or the gift shall be void. Shop. Abr. part 4. f. 13. voc. Tiff.

And hence it is, that where the devisee of lands or goods, or an executor of a will, doth die before the deviser, or him that makes the will, the devisee and will is void, and that neither the heir or executor shall have the thing devised. Id. ibid. Plowd. 345. Brett v. Rigden.

A devise to the wife for life, and after to the children unfierferred, is good. 1 and 60. Anner v. Luddington.

But a devise by a man to his heir and his heirs, is void. 2 and 11. Caron v. Abate.

One devised his leaves of lands to B. his cleft son, except the fum of 140 f. 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 take for it in the ecclesiastical court, or court of equity. Shop. part 4. p. 13. voc. Tiff.

If one devise to his son in tail, and if he die without issue, to the next of his name; the daughter after married cannot have it, for she is not of his name. Cre. Eth. 532. Bow v. Smith.

One devised a man and lands, devieth the fame to his son, and after, by another part of his will, devieth part of the same to another of his sons; these devise are good, and they shall be joint tenants. 2 Lev. 11.

3. That the testator, at the time of making his will, have uniam testamenti i.e. a mind and serious intention to make such a will.

For want of mind, not the words of the testator that gives life to the will: Since if a man rashly, unwisely, incidently, jealously or boastingly, and not seriously, writes or fays, that such a one shall be his executor, or have all his goods, or that he will give to such a one such a thing; this is no will, nor to be regarded. And the mind of the testator herein is to be discovered by circumstances that attend the time he died, or if time he died, or if time he deviseth, to be serious and true in his will, or requires witnesses to bear swears of it, 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. Stubb. part 11. f. 3.

4. 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. Also, the testator cannot make it with an oath; but if the caufe 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 cafe, 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 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 end, 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 persuasion, 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 it to some fome or other friends; if it be in cafe where the flatterer first threatens him, or puts him in fear, or to his flatterer joins fraud and deceit; or where the testator is a perfon 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 effects, himself: or the wife attending on her husband in his sicknes shall neglect him, and in the mean time flatter him to give her all: or where the peruser 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, I 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 shall be his will or no; and he conference with it, and then delivers it back to me, and says, yes; this is just as I would have it; and he gives me the will, or his wife, or some friend of a friend his; of his own heads shall make a will, and bring it to a man in extremity of sicknes, 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 press him much, and so writes words from him; especially if they be to make a will to some friends, or some others in his steads; in these cases the wills are very fugacious. Id. ibid. part 11. f. 25 and part 7. sect. 2, 3, &c. 4.

5. That the will be made in the form prescribed by law.

3. Of wills to pose lands and tenements.

By the Common law, no lands or tenements (except by particular custom) were devivable by any last will or testament, neither could they be transferred from one to another, but by solemn levy of seignior, matter of record or sufficient writing. Because it was presumed, that the testator who made the will, for want of mind, that he would not do in his health; that it proceeded from the dilemmer of his mind by the anguish of his diseа, or by finiter persuasion to which in his sicknes he was more subjeст. 1 Inf. 111. b. 1 Roll. Abr. 608.

The true reason seems to be from the nature of the feudal tenure, and the relation that there was between the tenant and his tenant. For the duration after length of time were made to the tenant and his heirs, or the heirs male 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
understand 1 his heirs of the present tenant, who being liable to the same fervices when they came into the tenancy, the lord might have the tureen and unlawful strength of the heirs, i.e., if they happened, by reason of their minority, to be incapable of performing the services, that fo he might, by his care and discipline, secure to himself tenants always capable thereof, either in their own persons, if they happened to be male, or by proper marriages with his lawful issue, if they happened to be females. Here, it is true, no all of the tenant's could be deprived of the feud, so as to defeat the lord of the advantages of his feignory; and hence it was, that a tenant could not devide it even to his own heir, to as to make him a purchaser thereof; for then he might not, by the donation of the lord, but the donation of the tenant, though he remained liable to the naked services, yet the lord left the advantages of wardship, marriages, &c. which were annexed only to those who came in upon the terms of his own donation by descent.

2 2 Pet. Cap. 427. But if the statute of wills, enacted, viz. "That every person having' manors, lands, &c. shall have power to give, dispose, will, and devide by will, in writing or otherwise, by act executed in his life-time, all his fad manors, &c. any law, statute &c. to the contrary notwithstanding." 3. Statutes of frauds and perjuries, 29 Car. 2. c. 3. § 5. All devises and bequests of any lands or tenements devisable by the statute of wills, or by any particular custom, shall be in writing, and signed by the party 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 fad devisor by three or four credible witnesses, or else they shall be utterly void and of no effect.

And by fel. 6. "No devise in writing of lands, tenements or hereditaments, or any clane thereof, shall be revocable other than by some other will or codicil in writing, or by a satisfactor under the statute of wills, and this, notwithstanding the cancelling, tearing or obliterating the same by the fad devisor or testator himself, or in his presence, and by his directions and consent: But all such devises and bequests shall remain in force until the same be burnt, or in manner aforesaid, or unless the fad devise or bequest by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three witnesses, declaring the same." Therefore if a will be of lands or tenements, it must be in writing, and it must be committed to writing at the time of the making thereof; and it is not sufficient that it be put in writing after the death of the devisor, because, in that case, it might be done by means of false witnesses, or by some one very well acquainted with the devisor, but nuncupative still: But if the will be first made by words of mouth, and be afterwards written, and then brought to the testator, and he approves of it for his will: or if the testator, when he declares his mind, appoints that the same shall be written, and thereupon the same is written accordingly in the lifetime of the testator; there is no doubt that it shall be as good as if it had been written at the first; if therefore one be very well, and another comes to him and asks him, whether his will shall have his lands? and he says, yes; and a clerk being present, puts this in writing, without any precedent commandament or subsequent all-wisance of the fad testator, it will not be a good will, unless it be put in writing. For in perhaps it may not be a good will even for his goods and chattels, if he that writes the will not bear the party speak, and another, that doth fland by the fad man, tells him what he says; in this case, if there be none others present to prove that he reported the very words of the fad man, this will be no good will of the land. But if a novary takes directions from the fad man for his will, and after goes away and writes it, and then he brings it again and reads it to the testator, and he approves it; or if it be written from his mouth by the novary according to his mind, and his mind were to have it written, although it be not nown whether he wrote it or not, his will is a good will. For a novary does only take certain rude notes or directions from the fad man, which he agrees to, and they be afterwards written fair in his lifetime, and not showed to him again, or not written fair until after his death; there are good wills of lands. But if a fad man bids the novary make a will of his lands, but does not tell him how, and the novary makes a devise of it after his own mind, this is no good will: And yet if it be after read unto him, and approved by the testator, it may be good. If a will be found written in the testator's house, and not known by whom, and it be read unto and approved by the testator, it may be good. In writing of lands and goods West, part 1. 758. Digit 72.

Plowd. 345.

4. In what language a will may be written, and of the circumstances of signing, sealing, attestation and publication.

It is not material in what matter or stuff, whether in paper or parchment, nor in what language, whether in Latin, French, Dutch, or any other tongue, or in what hand or letters, whether in secretary hand, roman hand, or court hand, or in any other hand, a will be written, so that it be known to be his will, and as able and legible, that is it not good title. It is to be considered whether the fad fervice is to be written in fair or legible writing; a will is not good, whether the writing be in fair or legible writing, nor good will in writing of lands and goods. Warneford. Warneford.

The clauses of the 29 Car. 2. above recited, having rendered the circumstances of signing, &c. necessary, it is next to be inquired, when, in legal construction, these requires shall be deemed to have been compiled with; which may be best collected by an attention to the following cases.

It has been held, that sealing of a will, is a writing within the statute of frauds and perjuries. 2 Str. 764. Horner v. Hornerford.

But a will in writing need not be sealed: But it is added, Q. if it be good to pass freehold or inheritance.
held estate does not require three witnesses; but this is a devise of a trust relating to lands, within the very words of the statute of frauds: The heir controvcrsing the former and the will, this point was not determined, but by two justices ordered. Sel. Co. in Chinn. 44. 3 Id. 36. 8 Id. 546.

Will made beyond sea, of lands in England, must be attested by three witnesses. 2 Will. P. R. 230.

7 S. had a power, at any time during the joint lives of him and his wife, by his last will, or any writing purporting to be his last will, under his hand and seal, attesting three or more credible witnesses (if he should die before his wife, without any issue between them then living) to charge lands with any sum or sums of money not exceeding 2000/., to be paid to such persons and in such proportions, as he should appoint; with the like remainder to M. if the hefr should die without issue in the life of his husband. 7 S. there was no issue of the marriage, and 7 S. by his last will in writing under his hand, attested by three witnesses, but not sealing, reciting his power, &c. didopse of 2000 l. to the plaintiffs (being his relations) in the proportions therein mentioned.

There were three witnesses to the will. Two of the witnesses for the executor, to whose will was signed by the testator, in the presence of all the three witnesses, but the third swore, that the testator having written and signed the will before, called for the witnesses, and declared that writing to be his last will, and that all the three witnesses were then present, and followed his perambulation in his presence. Lord Chancellor referred to the judges of B. R. who determined (on argument) that the will was void as a charge for want of being sealed. 2 P. Will. R. 526.

Dermer v. Turner.

A will of land was duly signed by testatrix in the presence of A. and also published; which A. wrote the will, but is now dead. His hand was proved. After this the testatrix called in B. to be a witness to the will; she told him it was her will, and published it as such; after this she called in C. and did the same. The question was, whether these witnesses attesting this will at several times, though all in the presence of the testatrix, was according to the statute of frauds and perjury? Baron B. held it ill, at least after at Deem, 1717. 1 Vin. Abr. tit. Deeps (N. 10.) 3. p. 128.

Lord Keeper Wright held a publication of a will before three witnesses, thought at three several times, good within the statute, and thought the writing of the will with the testatrix's own hand, a sufficient writing within the statute, but that it was not sufficient, because he was not in the presence of it. His lordship doubted whether owning the subscription to be his will. But the validity of the will is a question at law, and therefore ordered it to be tried. Prec. in Chan. 185. 3 Vin. Perfs. v. Perfs.

If a man draws up his own will, and sends it to counsel to be sealed, if he is a fit character of the legality of it, this is no will, unless it has a publication after he receives it back from his counsel. If after his will came from counsel, with alterations made by counsel, the party puts his seal to it, or subscribes his name, or writes upon it, this is my will; tho' there be no witnesses to it, yet this is a good publication; because it is in writing which he under his own hand and seal did write; in proof of which he did seal it. And tho' it had no formal beginning, but began, All I give and bequeath; and tho' there be blanks for the names of such persons as he said he had made a devise or feuoffment, to perform his will, if there be such a devise or feuoffment, this is a good will, and shall direct these persons, to whom such devise, &c. is made, to perform all things according to the direction of such will, 1 Vin. Abr. tit. Deeps (N. 2.) 16. p. 119.

If a testatrix signs her will, but delivers it as his act and deed; yet this will be a sufficient publication. 1 Vin. Abr. tit. Deeps (N. 7.) 13. p. 135.

An uncle, having devise his estate from his nephew and heir at law, a younger brother of the heir at law, at the uncle's funeral, snatched the will out of the hands of the executor, and tore it in many small pieces, but most of them, and particularly such part whereof was the devise of the land, were picked up and stitched together again: And on a bill to have the will established, it was decreed that the devisee should hold against the heir, and he to convey to him, and tho' there was no direct proof made that the heir directed the tearing of the will. 2 Vern. 441. Haynes v. Haynes.

5. Of re-publishing a will; and what shall amount to a re-publication, and when a re-publication shall make a devise good.

If a man devises certain lands, and after dies leaves the land to a stranger, and re-purchases; and after flew his intent, that the said will shall be his will. This is a new publication, and the land shall pass by the devise. 1 Vern. 330. Hall v. Danby.

So if a man saying his will was in a box in his study amounted to a new publication. 2 Vern. 269. Cotton v. Cotton.

If a man fai ke of lands, devises all the lands to I. S., and afterwards purchases the manor of D. and afterwards writes his will that I. D. shall be his executor: yet this is not any new publication, to make the land pass. 1 Bull. Abr. 418.

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. 3 Id. 347. Smith v. Hope.

So if a man devising certain lands to 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 requires 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 devisee being made executor by the will) as his other lands should: And after the devisee caues 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 there were before; and his intent appears, that it should be his will, by the annexing the codicil. 1 Rall. Abr. 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 has a codicil to the will, and A. dies in the lifetime of the testator, leaving issue; then 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. Cofis 407. 2 Vern. 723. Hutton v. Simpson.

It has been doubted whether if one devices 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 pass the land purchased after making the will, and that it was so determined by all the Judges in the case of Ashby v. Vernon; which see infra, fed D. Ulefs it appears he had his real estate under consideration. 5 Bac. Abr. 516. Miss. R. Giffon v. Rogers, in Chinn. Trin. 23 Geo. 2.

A. having given a legacy intestate to his son Jofeph; Jofeph, after A.'s death had another Jofeph, and then by a codicil to his will, confirming his will, he took notice, that since the left, 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 Jofeph in the place of the first; and
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 more than one will, and the last will be more by operation of which can be proved to be last executed; they are both void by the Common law for uncertainty, and will lie in the heirs at law: Also that although the wills are dated the same day, the limitations may take place if they are consistent both, to the disadvantage of the heir at law; And under this direction, the order appointed from, which was a dissimulation of the plaintiff's bill in the court of Exchequer in Ireland, was confirmed in favour of lord Anglesby, by the house of lords. 5 Bac. Abr. 517. MS. rep. Philps v. Anglesea in Dom. prae. June 1751. See the printed copy.

6. What shall be a sufficient proof of a will, and in what cases devises, legatses and creditors may be admitted to prove a will.

A written will, when it is written with the testator's own hand, proves itself, and therefore needs not the help of witnesses to prove it; and for this case, 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 witnesses to it, if it be known or can be proved to be his hand, it is held of sufficient certainty against any one. The order appointed from, which was a dissimulation of the plaintiff's bill in the court of Exchequer in Ireland, was confirmed in favour of lord Anglesby, by the house of lords. 5 Bac. Abr. 517. MS. rep. Philps v. Anglesea in Dom. prae. June 1751. See the printed copy.
bear affe&ion, as kindred, tenants, servants, and the like. A legatee is required 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 against the estate, where there are two witnesses of a will, where either of them have somewhat bequeathed unto himself, this cannot be sufficiently proved for those legacies, but for the rest of the will it may be sufficiently proved. 2 Wash. part 4. 497. But for all other legacies.

Where a testator by his will devised lands, and gave to the wife of John Hales an annuity of 20l. a year to her sole and separate use, and to J. Hales and his wife each of a legacy of 10l. and charged his whole real and personal estate with the payment of all his legacies and annuity. J. Hales was one of the subscribing witnesses to the will for avoiding and proving himself to be certain demo- ny were tendered and refused; and the question now was on a special verdict, whether this will was good and well attested within the statute of frauds and perjuries? The court were of opinion, that the will was not properly attested, as Hales was interested, and therefore not a credible witness, and gave judgment for the plaintiff, the testator's heir at law. 5 S. & A. 519; N. S. 29 App. Ayley v. Dayney, Mich. 1756. B. R.

Wills have been examined to prove the testator's intent. 2 L. Bray 1256. Coffin & al v. Gibbons & al.

The probate of a will cannot be controverted at Common law. L. Bray 202. Sir Richard Raines's case.

A recital of a will in a copyhold admission is evidence against any but the heir. Id. 735.

3. If the probate or register of a will be evidence to prove a pedigree, and the register's book is good evidence to prove a will concerning lands. 1 L. Raym. 731. St. Leger v. Adams.

One of the subscribing witnesses to the attestation of a will, having an annuity devise'd to his wife, was held not to be a credible witness within the statute. 2 Br. 1756. Hillaty v. den. of. Ayley v. Dayney.


A proof of a will cannot be made against a man by confession of his own witnesses. 1 L. Raym. 730. Pyke v. Pyke.

Executors may be held for a legacy where he proves the will, that he does not live in that diocese. Id. 847. Egerton v. Emslieke.

Testators, legatees, and creditors, are now made competent witnesses to wills, by the 25 Geo. 2, c. 6, s. 2. not giving a good and sufficient bond to certain do- ny were tendered and refused; and the question now was on a special verdict, whether this will was good and well attested within the statute of frauds and perjuries? The court were of opinion, that the will was not properly attested, as Hales was interested, and therefore not a credible witness, and gave judgment for the plaintiff, the testator's heir at law. 5 S. & A. 519; N. S. 29 App. Ayley v. Dayney, Mich. 1756. B. R.

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WILL

or for the avoiding of doubts upon the said acts of aliena-
by, and laws of the said colonies, as the same ought to
be in the construction of, or for the avoiding doubts
upon the said act in England. Provided always, that as
to the cases arising in any of the said colonies, no such de-
vice, or bequest whatsoever, shall be made null and
void, by reason of or by virtue of this act, unless the will or codicil where-
by the same act is devised, shall be given, shall be made after
March 1. 1753.

A special verdit upon a will of land, dated the 14th
of May 1750; and a codicil of the same date, made by
Walter Chetwynd late of Grosmont, Esq.

Special Verdit - At which day, before our Lord
the King by his Wyndam, and the said Walter
William Wyndam, Mabech Lindon, Catherine Lindon, Thomas
Stephens, alias Walter Paris alias Walter Chetwynd, Su-
innamon Blackwell, Henry Perriss, George Huddifon and James
Crafts by their attorneys, as the said William Henry Chet-
wynd by his will.

And the jurors, &c. being summoned &c. to do &c., and being elected &c. writing,
as to the first issue joined between the said parties, that
the said Walter Chetwynd was, at the time of making
the said writings importing to be his last will and codicil, of
found mind. As to the third issue, they find that the te-
latter and codicil of the date of the 14th of May 1750,
being the true will of the said Walter indefinitely
of the Manor of the Manor of the Manor of the
charge of the Manor of the Manor of the
said Thomas Stephens, alias Walter Paris alias Walter Chet-
wynd, in truth or for the benefit of the said Thomas Stephens, alias
Walter Paris alias Walter Chetwynd. And as to the fourth
issue, the jury find that the testator did not, by the said
writing importing to be his last will, devise to the said
Catherine, now Catherine Lindon the wife of the said
Matthew Lindon, an annuity of 200l. by the year, for the
term of her natural life. And as to the second issue, the jury
find that the testator was in his lifetime feized in fee
of certain lands, tenements, &c. in the several counties of
Warwick and Stafford, viz.

The references of Stafford Square, Robert Baxter, and Jefaf Higden
who likewise attested the same at his request, in his
presence, and in the presence of each other. And they
further find that the said Stafford Square and Robert Baxter,
being attorneys at law, were in or about the year 1747,
employed by the said Walter Chetwynd. And by a pub-
lic act of parliament " for sale of the elates late of Henry
Fleetwood, Esq; deceased, in the county of Lancaster,
raising money to discharge incumbrances affecting the
same, &c." And that the said Stafford Square and Robert
Baxter charged the said Walter Chetwynd debtor in their
book, and charged and charged and charged, until the said
And which charge continued so, until and after the death of the said
Walter Chetwynd. And that at the time of the sale of the
said elates late of Henry Fleetwood, the said S. S. and
R. B. delivered a bill for the said act to the trus-

tees nominated and appointed in and by the said act of
parliament for the purpures therein mentioned: And after-
wards, at his death, more than 12 months after his
death, in the said county of Lancaster, the said S. S. and
R. B. delivered a bill for the said elates late of Henry
Fleetwood, the said S. S. and R. B. received from the
said trustees, at several different times, several sums,
amounting in the whole to 302l. 41. 8d. and that the
said trustees were willing to have paid the remainder, if
it had not been for a mischance. But the jury find,
that in the said present act of parliament there is
contained a certain clause for payment of the expen-

des.

attending the said bill: (which clause they find in sec
verba.) They further find that at the time of the sai-
delivering, publishing and attesting the said paper writings, there
was a current account open and subsisting between the said
S. S. and R. B. and the said Walter Chetwynd for other
bills, but exclusive of the expenses of publishing the said pri-

cate act: On the balance of which account, it is stated
that the said S. S. and R. B. deliver or deliver a
bill to the said Walter Chetwynd in the sum of 138l. 14s. 10.
They further find that at the said time of the attesting of the
said writings, and also at the time of the death of the said
Walter Chetwynd, there was due and owing from him to
the said Jefaf Higden, his apothecary, the sum of 181.
5l. 8s. 4d. and that the said Walter Chetwynd owed to the said
Jefaf Higden at the date of December 1750, and before the said
Walter Chetwynd deceased, the said Jefaf Higden.

And they find that the said Walter Chetwynd died on the 17th of May
1750, without wife, and sifed, &c. and that the said
William Henry Chetwynd is the only brother and heir at law
of the said Walter Chetwynd. And they further find that his
real estate at the time of his death, at the time of his death, was subject to certain mortgages made
thereby, by the said Walter Chetwynd, to the amount of
10000l. and of 5000l. more, made by the said Walter
Chetwynd, as by the said will, Walter Chetwynd owed at the
time of his death, the said Walter Chetwynd by bond,
and by simple contracts 2857 l. and that his personal
estate then amounted to 1357., and was sufficient
to pay all the simple contract debts and bond debts of
the said Walter Chetwynd. And that the several real estates
in mortem were of more value than sufficient to satisfy the
several incumbrances affecting the said W. H. C.

And the jury further find that on the 3d of August 1750, the said
William Henry Chetwynd filed his bill in Chancery against the
said William Wyndam, &c. for the obtaining a decree
and recovery of the said lands, &c. and thereby compelled
the said Walter Chetwynd to the payment of the said
paper writings. That whereas in the said paper writings put in, and amendments made to the
bill; and other answers put in, And the said William
Henry Chetwynd prosecuted the said suit in Chancery
with all due diligence. The jury further find that the
said William Wyndam, as executor of the said Walter
Chetwynd, and William Chetwynd, and Edward Chet-
wynd, &c. for the amount of 181l. 5l. 5s. after the death of the said Walter Chetwynd,
and before the examination of the said Jefaf Higden in
this cause: And that the said J. H. had not at the time
of his examination in this cause, any demand upon the
said Walter Chetwynd. But whether upon the whole
of the foregoing premises, and in the light of the said
found, the said paper writings or either of them was
due executed by the said Walter Chetwynd, to the said
Walter Chetwynd, for the payment or the payment of
lands or tenements, or not, the said Walter Chetwynd are
wholly ignorant: And therefore pray the advice, &c. &c. This
case was argued twice: first, on Friday the fifth of Aug-
lift, by Sir Richard Legge for the plaintiff, and Mr. Clo-
ton for the defendant; and again, on Monday the 18th Inft.
by Mr. Serjeant Prime for the plaintiff, and Mr. Nor-
non for the defendant. The principal objection in-
ited upon by the counsel for the defendant, was " That
subscribing witnesses to the will were not, at the time of
their signing, in the county of Stafford, and therefore,
this was not a good will of lands, within the statute of
29 Car. 2. cap. 3. for prevention of frauds and perjures;
and not being attested by 3 credible witnesses. In proof
of which, they urged many arguments, and reasoning
from several cases: And, amongst others, they cited two cases
as in point; viz. Hildred v. Tresaght, reported in 1 Le-
W. 3. page 277. and Hollis et ex dom. Ayley et
aw v. Dewysong, 2 Strange 1253.

But it would be unnecessary to prefix either the argu-
ments of the counsel, or the authorities upon which they
relied in substance, though they were read by them in
minutest, in delivering the opinion of the court upon it.
After the court had taken some time to consider of it,
they all agreed that the will was duly attested by three
credible witnesses. And now lord Mansfield delivered the
opinion of the court upon the bill, which was as follows.

The doubt made by this special verdict sprang, after
the cause of Ayley v. Dewysong, out of the general question
then
W I L
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 subscribing; and make the will wholly
and absolutely void, for want of form, as much as if he
had never attested at all said. Of this the same rela-
tion should not be disinterred, and competent to be
examined in support of the will."

This general point is the basis of the objection to the
subscribing witnesses. Unless the defendant can support
it, he has no ground to stand upon: But though he should
succeed in the general objection, the application to the
case as decided 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 "credible" has a clear precise meaning.
It is not a sort of art appropriated only to legal notions;
but has a signification universally received. It is never
used as synonymous to competent. When applied to
testimony, it presupposes the evidence given.

After the competence of a witness is admitted, the con-
sequence of his incapacity to testify: 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 "credible" is added; 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 the same case, it is very unnecessary to add the epi-
phets, here, to subscribing witnesses. And yet, to make
the essential fulness 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 t Safor did not execute; if
they had, at the time, the word charlatans, and had com-
mitt the most infamous actions; yet their attestation
answer the necessary form: because the testament 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
date of Butler and Baker's cafe, 3 Ca. 56. b. 1. 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
inferted here, as a sort of course, and misapplied. Had
form merely or effect of the word, in this particular
case, been attended to, it could never have been inferred;
because, in the natural and obvious sense, the meaning
must have been rejected, from the consequences it would have:
And in any other, it has no meaning at all for, suppos-
ing it to signify competence, competence is implied in the
word witnesses."

This whole clause, which introduces a positive solemn-
ity, 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 cre-
try propositions, and where the direction should be plain,
the meanest capacity; is so loose, that there is not
a single branch of the solemnity designed or described with
sufficient certainty to convey the same idea to the greatest
capacities. There have been petitions, and contradistinct
opinions amongst the lawyers, on every part of the form; as, "What is a signing?
by the tesser? Whether the witnesses are to attest the
context, or doing; temper? Whether they are to see the
tesser sign? Whether they ought to know that he signs it as
his will? Whether he ought to publish it as his will?"

W I L
A very little precision, and a very few words, might
have prevented all these questions.

In a clause not the most accurate, I can easily believe
that the usual epithet "credible" was slipped in, as of course,
without attention to the impropriety of using it on this
occasion. It has been said "That this act of 29 Car. 2. cap. 3,
drawn by Lord Chief Justice Eliz.," but this is
fearcely probable, since it was not passed till after his death:
and it was brought in, in the common way; and not
upon the recommendation of the judges.

But what为企业 the word "credible," 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
there established: Because there was, there could be, none
applicable through-out to this new cafe. The necessity
of subscribing witnesses to any instrument, never had existed
before, in this country. There never could have arisen,
in the law of England, a question, "concerning the
competence of a witness, at the time he is knowing the
testament, and is to give evidence about one point. Whether he was competent at the time of his examination."

The time of his examination could not possibly be the
criterion upon which the validity of the will was to de-
depend. The witnesses might not live to be examined;
their incompetence to be examined, might arise long after
their executing testament.

A what objection therefore to the subscribing witnesses,
should be sufficient to avoid a will, as informal" was
left to be judged of as cafes should arise; by general prin-
ciples, by analogy to the law of witnesses in other in-
fances, and by arguments drawn from the nature and fitness of
the thing, with regard to justice, convenience, and the
intent of the statute.

When solemn determinations, acquiesced under, had
settled precise cafes, and become a rule of property; they
ought, for the sake of certainty, to be observed, as if they
had originally made a part of the extant 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.
On the last point: I think it the better and better to observe
that the power of devolving ought to be favoured. It is
a natural consequence of property, and the right a man
has over his own. 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, constitutionally only, by the in-
trusion of feudal tenures; because, originally, every
species of alienation was contrary to that system. As
soon as the power of alienation inter vitas was indulged, tes-
maments followed, indirectly, as declarations of uffes. The
statute of uffes accidentally checked this form of devising.
Therefore the statute of wills was made. The 29 Car.
2. a now is to be considered as relative to the present question.) did not mean to restrain testamentary 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 consequences re-
maining, which made testamentary dispositions of land
more reasonable than they were among the Greeks and
Romans, at least before the conquest. The edict then
onl is heir, ab intestato. Among collateralists, not all
the next of kin, but one only is heir; to the exclusion
of many in the same, and many in a nearer degree.

Single contract credits had no right to be paid their
debts. Any legacy 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 intestato is subject to
all debts, and governed by natural family equity. In
real estates, the succession is governed by political con-
sequences of a possible system: Which make the testamentary
Which positive if which and they it he devise, have or leafon, intitle not by proved iwhich tal bias. Therefore the payment, it, witnefs I or at, with. tary payment, In juftice, paid authorities his parifliioners the for his Ecclefiaftical the a body himfelf, himfelf, in rejecfion of the with. His examination, the a body himfelf. If ried, and the if the testament civil fion who the dead, and some now living, make the fame obfervations. Suppose the subfcribing witnefles honest; how little need they know? they do not know the contents; they need not be together; they need not fee the testator fign; (if he acknowledges his hand, it is fufficient); they need not be in the fame room; (if he delivers it as a deed it is fufficient.) For thefe and many more reafons, it is clear that juftices fhould lean againft objections to the formality. They have always done fo, in every confrufion upon the teeds of the statute: a fudie they ought to do fo, in raiting a confefional fystem, not prefcribed in words. And yet in this cafe, they do fo, that this item would spread a fcare, in which many honeft wills muft unavoidably be intangled; and be no prefervative againft fraud. At the time this act was made, the law rejected no witnefles to prove a will; unlefs, at the time of his examination, his testimony tended to fupport his own title, and was in no way calculated to recover an interefl under it. In the ecclesiallcal court, the probate is conclusive to every body as to every part. If a legatee come to prove it, he intitled himfelf to his legacy. But it the legacy was contingent, and at the testator's death could not take effect; if he had the fame or a greater interefl, though the legatees might be for another will, he was a witnefles: A releafe, payment, or tender, made him a witnefles. In the courts of Common law, where the witnefles had a charge upon land deviffed to another, he was juft in the cafe of a perfonal legatee. If he had as great an interefl the other way; if his interefl at the testator's death could never take effect; if there was a releafe, (of which feverall authorities were cited); and I will add, as by necessary confequence, if there was payment or tender, he was a witnefles. Nice objections, of a remote interefl, which could not be paid or releafe, though they held in other cafes, were not allowed to difqualify a witnefles in the cafe of a will: As a writ of curia shows, a writ of a devife to the use of the poor of the parifh for ever. Fide 2 Sid. 109. M. 1658, Townfend v. Raw. Before the flature, no man could, in a court of juftice, intitle himfelf by his own examination, to a devife. So, after the flature, no man fhou’d intitle himfelf, in a court of juftice, by virtue of his own subfcription, which at the time of subfcribing, he could not have proved by his examination. The difability of a witnefles from interefl, is very different from a positive incapacity. If a deed muft be acknowledged before a judge or notary publick; every other perfon may be a witnefles, and the confequence is, no capacity in evidence. But objections of interefl, are deductions from natural reafon, and proceed upon a prefumption of too great a bias in the mind of the witnefles, and the publick utility of rejecting partial testimony. Prefumptions fland no longer than till the contrary is proved. The prefumption of a bias may be taken off, by fhewing the witnefles has as great, or a greater interefl the other way; or that he has given it up. The prefumption of publick utility, may be anfwered, by fhewing that it would be very inconvenient, under the particu- lar circumstances, not to receive fuch testimony. Therefore in the law of affure, the course of bifimens, and other reafons of expedience, numberless exceptions are al- lowed to the general rule. The prefumption of bias arises as the time of subfcribing. But it may be an- fhed.—If part is deviffed to a subfcribing witnefles, the Vox I. N0 156, N 253. premption is anfwered, by fhewing he was heir at law, or that the devife is void; or that he has removed it. Where is the reafon to fay that a witnefles who do not know the contents of a will during the testator's life, and at his death takes no benefit, was baffled at the time he subfcribed, or can be baffled at the time of his examination? During the life of the testator, devifes are mere prefumptions. If they are not corroborated with the defcription of bias from the possibility, is anfwered by the fact when it becomes an interefl. His fwearin? when he is totally difaffected, is confiufed, that the possibility is not to be presumed the corrupt caufe of his subfcription. For the fake of third perfon, it is wife and juft, to allow the objection, that he was bribed; otherwise, many settlements by will must be overturned, to the prejudice of families. It is natural and ufual to give legacies to fervants, and tokens to friends.—Perfons under these defcrip- tions are most likely to be witnefles. Ought fuch tribtes to overturn unavoidably the mutt defcribe defcriptions of the greatest effets? which may be attended often with this family difturbs, that a man may have given his money to one part of his family, and his land to another: In which cafe, the will would be good to the money; and void, as to the land. If the legatee had paid fe, that would have been a partial rule. But it is controverted for, by praetition, and to guard against fraud. It is nota guard, even in theory, in the cafe of legacies: Because, they may, in another shape, attef the devife which charges the land with their legacies. It is fettled, "That where the land is once charged, and it always is an auxiliary fund, with the payment of legacies, by a follemn devife, the legacies may be given, altered, or revoked by a fubfequent will unattel ted." The fraudulent legatee might attef the charge, and get his legacy in a codidul unattel ted. Let a will be ever fo fair, a fip in form is fatal: which is a certain milchife. But, a will is not fraudulent; though it is allowed to be formal, it may be fet aside upon evidence and circum- fances. Neither reafon, nor policy requires the objection to be carried farther than I have laid it down; agreeable to the law before the flature, and the univerfal maxim, To att the caufa non est adhibendus. But if judicial determinations, acquifited under, and become a rule of property, since the flature, have extended the in- capacity further, they muft be adhefed to: Which brings me Secondly, to confider the judicial determinations since the flature. All determinations agree exactly with these principles. In many infances, the prefumption of bias from a legacy, at the time of subfcribing, has been allowed to be taken off by a releafe. Authorities in print have been cited, to fhew this was confidered as a fettled point: And I verily believe it was fo, from the authority of the obfet and moft eminent praetitioners in Woffington-ball, and therefore I give credit to the dictum of Adams in Fineer, (See Fineer's Atr. tit. Evidence, page 14. N 53.) That it had been folemnly agreed by the judges, that where a perfon had a legacy given, and did releafe it, he was a good witnefles to prove it. I knew before that the cafe of Jutfy v. Deofeg, a will of a very great efate was liable to the objection; and the heir at law would have contended it: But as it was certain the witnefles would be paid, or releafe, no opi- nion that he took, encouraged him to think it worth his while. Mr. Tawakerley and Sir Thomas Boxle have told me, they took it to be fettled; and indeed the number of wills where the objeifion lay and never was taken, de- monstrated it. There is not a fingle determination which carries the importance of the precept, prefcribed by the rule I have laid down; viz. That a perfon fo far as not, in the court of juftice, intitle himfelf to a devife, by virtue of his own subfcription, which at the time of subfcribing he could not have pro- ved by his examination,"
That is the case of Hilliard and Jennings. That is the resolution and judgment of the court in the case of
Anthony Danforth. There the defendant was
disposed to an annuity of 20 l. a year to Elin, the wife of
John Hailes, for her life, for her separate use: And
there did not appear to be any personal estate. Her in-
terest was a charge, in the nature of a legacy, to be paid
by the defendant, out of the estate devised to him; and
being for the benefit of her separate use, was a trust, and the defen-
dant 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, by a court of equity of course, have accrued the
trust. So that she was the effeito 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 estimation : But
no attempt had been made towards paying, or tendering,
the value of the property.

This brought it precisely to the case of Hilliard v.
Jennings: The witeness, in a court of justice, was to
support a devise to himself, by virtue of his own sub-
scription; (for the cause is, as far as the cause had been
the witnesse, or the husband the devisee of the ann-
uity.)

It is true that Lord Ch. J. Lees, in delivering his opin-
ion, (which was April 22 1746. Pof. 19 Gen. 2.) ar-
gued as if the objection of benefit from the will to the
witnesse, at the time of subscribing, could not be an-
swered or taken off by any subsequent fact: which he
grounded upon the authority of the Roman law and the
English law. But he is said "Conditionem testament
etque infcribere dehntum, cum sigrnatur, non maris tempore." But the sense of this passage was not enough con-
fidered.

"Conditionis testamentum" here means the positive capacity
of the witnesse's; their rank, or quality, as freemen,
乒乓, &c.

There never was a time, in the Roman law, when in-
terest 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-
possess the deceased's estate.

But in the 12 tables, the testamentary heir might be
made two ways; in præscripta, as Plautarch describes in the
scease of Caristi; or in the form of a legislative act, in
cemissi coactus.

The 12 tables gave an absolute power to every man,
to make the law of his own fucception; but prescribed
no form. As a testament was an alienation of the testa-
tor's property and family after his death, the form of
manipu ration per Et Librem, used in other transfers of
property or family, was followed in this: The heir
was supposed to buy, and the testator to sell his sucession
and family, for and as regards their family. The execu-
tory was transferred with all the fymboles of a sale, in
the presence of the officer who held the balance and of
five freemen, citizens of Rome, 14 years of age at least,
ordinarily required to bear witnesse.

These ceremonies and symbols were invented before
instruments in writing: And this imaginary sale per Et
Librem was used in alienations, adoptions, and almost
every species of change of dominion, or property
strictly so called, ("Preprium eft quod quis libera mercatur
et feriis"). and in many other contracts.

Subsequent laws and usages, especially after testaments
came to be in writing, took away the ceremony of the
fymbolical sale, added two witnesse more, and preferen-
ted forms of attestation; but left the condition of the wit-
nesse, the fame; they must be freemen, Roman citi-
zens, adult and fymbolical. Yet by an equitable construc-
tion, general reputation was fufficient: As for the two
witnesse, whom every body considered as a freeman, really
was a slave.

This was the conditionis testamentum, and must exift at the
time of subscribing; as much as where there is a custom
to surrender into the hands of two copholders out of cour-
s of justice, to compleat the compleat.

Though in other caufes, the objection of interest, to
a witnesse was allowed; it did not incapacitate witnesse
sto a will.

While the testament per Et Libram continued, nei-
ther the teftator, or heir, nor any of the families of either,
could be witnesses; because they were suppos'd the par-
ties to the contract.

When the symbolical sale ceased, and testaments were
written in print and secret, the heir himself was a fufficient
subscribing witnesse. Afterwards, that the will was op-
ened, and he knew the contents, he was a fufficient
subscribing witnesse: As appears from Cicero for Millo,
speaking of Cyrus (fett. 48.) " uno fui; teftamentum fu-
mol obligarni cum Clidio; teftamentum autem palam fe-
erat; & illum haeredem & me scripserat."  

Fufiantinian, 1. It. 10, fett. 10. recites the
heir having been allowed to be a witnesse; but
forbids it, "quam upon the foot of his being interested, but "ad
Vmationem transit familias eerste; quia fubfcrinere
inventor, fubfcringentur, judicatores infra testa-
tamentorum & haeredem agi." But in the next fettion (fett.
11.) he expressly allows the effeito que truft, and legateses,
to be subscribings witnesse: quin non juris fusciperes factum.

And yet the heir might be merely a trustee for the whole
inheritance: to be made to the effeito que truft; and the
legatees may exhaust the whole estate.

This abundantly flows that the paffage from the Coke
and Diggel did not relate to witnesse being intereffed. And
the Coke and the Diggel arc confident with the Ifitute on
this head. The Coke, Diggel, and Institutes are all one,
without now refifting this defult publishing in the
third year of Fufiantinian: The Diggel was compiled be-
fore the Institutes; but published a month after, in the
feventh year of Fufiantinian.

The propofition "That any kind of interest, at the
time of subscribing, could not afterwards be taken off;
and the application of this paffage in support of it, was
much agitated in Wemfingxin Hall and the whole king-
dom. A gentleman at the bar, pursing the propofition
through all its consequences, hit upon this point,—
"That a charge upon land for payment of debts,
would defeat the will, if a subscribing witnesse," was a
creditor at the time of subscribing. As soon as it oc-
curred, it was named "the fweat of accounts"; and it
had been many such defults: but the quefion, " Whether
the witnesse was a creditor," never had been asked at law;
nor by interrogatories in chancery, framed to elufblish
or impeach a will.

If the general rule was right, the deduction feared
very plausible. He put this point in iflue, in chancery;
and examined to it, in behalf of the heir, in several caufes.
Lord Hereford's will was one of the faif: Tös was
another.

A cafe soon happened which brought the general pro-
opofition bang out by Lord Ch. J. Lees, under judicial ex-
mam, in a court of Feb. 1746. the earl of Clif-
bury died; having made a will, 15th May 1746. of his
whole estate 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, pecuniary legacies. All three re-
ceived 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
effectuated, and recovering this title, and flating the
whole matter. Notwithstanding the will of 1744,
which the teftator had revoked, (as he thought, effectu-
ally,) and might probably have cancelled it; it was a
benefit
benefit to the witness, at the time of subscribing, to have a legacy under the will.

I had taken the liberty to ask Mr. Justice Donjolin, "Whether the judgment of the court, in the case of Afsie v. Drowey, was on the general proposition." He told me it did not; but upon the particular circumstances.

At the death of the testator, it was indifferent to them, which will prevailed: besides, they had sealed: He declared the last will, of the 15th of May 1745, to be well proved, established it, and decreed the trust.

I mentioned to the Lord Chancellor, who had got from Lord Ch. J. Lee, a copy of the opinion he delivered; he said, "The only way was, not to try the point.

The case in judgment was of a devise to the witnesses. 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 1757, whereby he devolved certain premisses to his youngest son George, his heirs and assigns, charge the said John as surety, and take $200 on bond to Launcelot Baugh, the testator's younger brother. And the said testator 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. In case both his sons should die under 21 unmarried; then the said testator devolved the said first mentioned premisses 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, charge the said John as surety, and take $200 on bond to Launcelot Baugh, the testator's younger brother. But the testator'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 1714; having first made her will, and devolved the said first mentioned premisses to Catherine Rawlin, charge 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 Oxon and Elizabeth Holloway as trustees in common, charge the payment of the debts and legacies appointed to be paid thereout by the said Richard Baugh, and also of the debts, &c. of the said Elizabeth unfa-

cished by the said Catherine Rawlin. The said Ann Oxon and Elizabeth Holloway claimed the said premisses, as on the ground, and devolved the said by the will of the said Eliza. Baugh and Catherine Rawlin. Launcelot Baugh said his bill, and claimed as and for heir at law of John Baugh the surviving son of his brother Richard Baugh; thereby impeaching his said brother's will.

The order is stated 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 representation; the devise does not stand in the place of the devisor, as to simple contract debts; and till the statute 3 & 4 W. & M. the devisee was not liable to specialty debts, (because he was considered as an alien, and not as the heir); they are conveyances or dispositions mortis causa; and that is the reason why a man cannot devise land which he shall afterwards acquire.

One devise may be void, (as in the case of this very will); and the devise of another good. There is no probate of the whole instrument: Every several devise 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 distinction laid to have been made by Lord Ch. J. Holt; and the authors referred to by Swainson are strong, upon the reason and fitness of the thing.

The danger of fraud, from the imagination "That four witneses might divide the estate among 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 consider the present case under its own circumstances. These witneses are in the nature of legates; not several 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 possibility, upon a contingency which contingency never happened.

But if taking at all, I think a charge "to pay debts" ought not to incapacitate subscribing witneses; 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 fine in his grave.

Fraud cannot be premeditated, nor infesting a clause which it would be iniquitous not to put in.

No man would resort to wicked and fraudulent practices, to get his debt charged up by the will of his debtor: if he fulfiled the debtor's circumstances, he would not stay till his death, or trust a revocable bequest.

The presumption of fraud in this case would be a gainst 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 testator, and therefore most common to this case, are generally in some degree creditors, such as servants, tradesmen, &c. to whom the devisee, and the disaffixed such persons to be witneses cannot answer any ends of publick utility.

Upon the whole we are of opinion that this will is duly attested by three witnesse: Bart. Rep. 414 to 424. Nov. 25, 1757. Vind. v. Cloutian.
The case of Anny and Dowling, as often before mentioned, is reported in Stan. 1253 to 1255, in manner following.

The said Anny and Dowling made a special deed, for lands in Cambridge, on the demise of Christopher Allly, D. D. and Mary his wife. And upon a trial at bar the jury found this special verdict.

That James Thompson, Esq. being feid 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 testament, as follows:—

"That this declaration is made by James Thompson, 1st of his right, to the saving and releasing of any part of his estate which is held in fee of the said Anny and Dowling, and if the same be in any manner in fee of the said Anny and Dowling, it is hereby declared to be void, as to any parting 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 left by four, who fraudulently devise, and therefore it is equal to saying, it is void as to any parting 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.

That to this will there are three persons who subscribe their names as witnesses, whereas John Hailes is one; and that in their presence, and of no body else, he signed, sealed, and published the paper writing as for his will; and they three attested the same in his presence, and are all three living. They find the identity of John Hailes the legatee and subscriber, and that Elizabeth his wife is still living. For the devisee died the 25th of December 1743, and was feid as aforesaid, and that Mrs. Allly (one of the feftors) 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 Hailes 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 seftors, Gr. fed. sextum, &c.

This case was 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 Hailes now stands, 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 feu dal tenure, Wright's Tenures 175. But it depends upon powers given by statutes, which must all be conferred together, and within one general 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 devisee. These were checks introduced to prevent men from being imposed upon; and certainly meant, that the witnesses (who are considered to be credible, though not such as to 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 Mod. 262. Camb. 174.

That 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 fill fatisfie, 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 Hailes's advantage to evade the fund by taking in the real estate; and we must at law consider the husband as benefited by the annuity, though it gives to her separate use; for it is his money the moment it is paid into her hands, or if not, it ceases him in point of maintenance.

It was objected, that nothing v£las till the death of the devisee, therefore the time of the attestation 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 suppressed, was, that it may be void as to the annuity, but good as to the devise to the defendant; which is grounded upon an exhibition in Carthew's report of the case of Hillard v. Jennings 514, that the will was void as to the devise of lands to the plaintiff. But wherever reads that will from the record will fee, that there were no other lands devised, and therefore it is equal to saying, it is void as to any parting 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.

That as to what is said in Stain. 256, it relates only to wills of personal estates, and cannot affect the construction of the statute.

The Diggb, flb. 28. tit. 1. l. 22. De testamentis, libri >, eft, & signa, is express: Conditione testamentum fum imperium, et in mortis tempore, & fo is the Code, lb. 6. tit. 23. l. 7.

We therefore hold this not to be a good attestation of a will of lands; and then the title of Mrs. Allly the lessee 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 Anny and Dowling, from a MS.

Lee Chief Justice. This case for the opinion of the court on the following cause.

In an action to recover a debt, the plaintiff declares upon the demise of Dr. Allly 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 feid in fee, by a paper writing, purporting to be his last will and testament, dated the 1st of February 1743, gave all his lands to his wife, and to the defendant John Dowson, for his life, the remainder to his and every other heir 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 intent, that he doth pay all such charges and charges chargeable all my estate real, as well as personal, with the annuities and legacies herein after mentioned." And amongst others is an annuity of yearly rent-charge to Elizabeth the wife of John Hailes, 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 Hailes 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 Hailes, mentioned in the said paper writing, and both of the said Elizabeth. That the said James Thompson died the 25th of May 1745.

That the said John Hailes and Elizabeth his wife are both alive, and that the defendant Dowson, before, as well as at the trial, tendered to the said Hailes the two legacies of 1l. 12s. 1d. which he refused to accept, and they find that the title is not any other way defeased, or discharged. That Mary Allly one of the lessees 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, Whether
whether the will of James was valid, executed pursuant to the law.

There are three points which are established in the execution of this will, but one of the three is a lawful claim on the will, and there is balance of terms, and it is fair to say the will was fulfilled and executed to the satisfaction of the whole, and without difficulty. It is, therefore, evident, that James was not until the time of his death, as this is a case where the will was a cause for suit, and is not required. It has been a case to the contrary, but it is not considered part of a whole, and the matter stands here as it was considered as a case where the matter of the will, and not the will itself, as a whole, is considered as a cause of action in the suit.

But it is not true that all the suits are not the same. Here, we will consider the suit of the will in this case, as it does not at all affect the suit. The suit is based upon the claim that the will was not due to the will, but to the will of the party, and that he was given a certain power of the will, and not a power of the will, to be administered, or a will to be administered in the manner of the suit.

Nor can the trial and discharge of the legatees make any difference in the case, as it does not at all affect the suit. The suit is based upon the claim that the will was not due to the will, but to the will of the party, and that he was given a certain power of the will, and not a power of the will, to be administered, or a will to be administered in the manner of the suit.

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The suit is based upon the claim that the will was not due to the will, but to the will of the party, and that he was given a certain power of the will, and not a power of the will, to be administered, or a will to be administered in the manner of the suit.

In conclusion, it is clear that the will of James was not valid, executed pursuant to the law.
Add to these the case of Hilliard and Jennings, as reported by Lord Raym. 505, and by my Lord Ch. B. 277, and it is visible that all the reasons upon which the court determined in that case, are applicable to the present.

The objection 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 interceded, who might probably be induced to use fraud, were to be allowed to be a witness; and if persons who would not give evidence, or examination at the time of attestation were to be admitted, it would be admitting so many dead letters as witnesses.

The saying of Lord Raym. as reported in the case of Bagnall and Hallowing, 1 St. Will. 577, that it was determined in that case of Hilliard and Jennings, that the device was a good witness to every thing in the will but his own device, which was void, must have proceeded from some mistake, because Lord Raym.'s own report is contradictory to it, and there is no foundation for any such inference from any of the other reports.

Upon the whole therefore we think, that Hills appears to have been a witness to every thing in the will but his own device, and is therefore not a credible witness. The statute was made to prevent frauds at a time when a man is frequently the least able to reftit them: And the check intended against all such, was the presence of three disinterested witnesses, which it is in the power of any man to have. But that not having been observed in the present case, the rules are all of opinion that this will was not well executed in the manner required by the statute, and therefore that there must be judgment for the plaintiff.

The following is part of an argument lately made in the court of Common Plaunt, wherein the principles laid down in the aforesaid case of Wyndham and Chetwynd are unsurrputed.

Due on the demife of Hinfey against Kersey. Two questions arise out of this will. First, whether it is executed according to the statute of frauds. Secondly, if not, whether the objection to it is cured by the law act.

The particular question under the statute of frauds is, whether the witnesses are credible; to clear which, the following points must be taken into consideration.

First, who are those witnesses which are described in the act by the word credible. Secondly, whether the witnesses are legally admitted, and take either form, viz., in writing or oral. Thirdly, whether this credibility can be purged by any matter or past facts, so as to establishe the will. Fourthly, whether admitting, they cannot be admitted to prove their own legacies, they can be admitted to prove those of the other devises wherein they have no interest.

Upon some of these questions I shall be obliged to differ with the opinion of the court of King's Bench delivered by Lord Mansfield in the case of Wyndham and Chetwynd; or rather, fo I wish to put it, I shall agree with the judgment of the same court, delivered by Lord Chief Justice Lee; for as both the opinions are jufly reafoned by authorities, and all the facts in the case, without hazarding his reputation, Magnes fuit judice quiqque tuctus. I had rather have it said that I concur with one great judge than that I difent from another.

The course I shall pursue is this: First, I shall endeavour to give you the scope of Lord Mansfield's argument, as I understand it. Secondly, then, I shall make use of the method in which I shall treat the subject under consideration; and while I am establishing my own propriety, I will endeavour to answer the argument on the other side as it falls in my way.

His Lordship's method of arguing, as far as I am able to collect it, is a kind of innuendo. He says, that if these assertions of three witnesses is mere form, in which light the judges should always endeavour to get over the objections in favour of the will; and many inferences to this purpose are cited, shewing how liberally they have dealt with the statute where the objection was for not only.

Then with respect to the clause itself, he infists that this is not a question of conftuction upon any words of the statute; for that no fires ought to be laid upon the word credible, which is either misapplied or nugatory, as induc'd in the word witness: That the whole clause is indeed ill placed and inaccurate, and the world is fairly made to make the execution something more formal than it was before: That the statute being deprived of the word credible, the other word witness was to be expanded by Common law analogy. From whence this rule is taken; that as in Common law no man was allowed to be a witness to prove his interest for himself, so fituate the statute shall 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 that a release or power will reestablish the witness, if his incompetency really stands in the way; but that if it be a witness which is competent, any release may be competent enough to prove the will for every person except himself.

In opposition to this reasoning I propose to maintain, that this credibility, (which I shall prove to be competent) is a musty and substantial qualification of the will. A will must be proved by witnesses who are competent, for the reason that no witness is incompetent at that time, he cannot purge himself afterwards either by release or power, as to set up the will. Thirdly, that he cannot be a witness in that case to establishe any part of the will; but that the whole is void for ever. As my brothers differ with this question, I suppose that those who are non-competent, and their refes are competent by the rule of law, I might, if I thought it fitting, leave all the other points unsurrputed, as not absolutely necessary to the decision of the 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 do all throw light upon each other, and the drift are proper and material introductions to the latter. Another reason is, that the argument is agreement as far as it goes, as in the may yet come before another court, and likewise as no cases of the like kind, in my opinion, are cured by the late act; but that future wills, as well as those that are puffed under such like attentations, must call up the same questions, 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 reinforce Lord Chief Justice Lee's, which has been so considerably shaken, I may say overturned; because the left opinion, if it is acquitted under, almost always governs, and becomes the leading case. So that if I should now decline the arguments this would be in a degree but a partial alteration of Lord Mansfield's doctrine, which I am clearly satisfied is erroneous. These reasons no doubt prevailed 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 in that particular case in order to avoid a thought wrong, than to give further strength to that error by avoiding the contile. I have hitherto treated the argument I am anfwerins, 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, and not finally adopted by the court, and the errors. As 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 puisne judges agree with his lordship in all his three grounds, or if not in all, in the first of these three; nor do I think it right now to enquire, because the practice of publishing a publick resolution in private by parole might be attended with some bad consequences, and that the transaction of all the will, not only in the presence of the testator, but in the presence of the testator, and if 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 neglect to pass over or disregard even a single word, that he has thought material. I am very sensible that I am destroying an honest and important objection for the interest here, which I must treat as a serious incapacity, it is too flight even to disparage the witness's credit, if he could be sworn; and yet I must adjudge him upon this objection to be a perjon to deftitute of all credit, that he is not fit even to be examined. But as it is not my business to be a lawyer, I believe it may be under- clare the law as I find it laid down, if the statute of frauds has enjoined this determination, it is not my opinion, but the judgment of the legislature. As I am satisfied, however, that this will was fairly executed, I am very glad my brothers differ with me, as I have enabled me to give you a judgment against my own opinion.

Before I proceed, I define it may be understood, that I do by no means deny the authority of the judgment in Chitty v. Wynnham; 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, not upon any particular construction which can be applied to that case of a mere legatee witness.

The first general question then, or rather enquiry, being this, who are the witness-witnesses 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 asked, at what time must the witness be endowed with 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 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 Hillard and Fentings, which is a case in point upon this question. In the first place I beg leave to say, that this question may be al- 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 to be distinct; and if the fact be 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, finds as it did upon the old Common law principles, a statement in favour of it against my own opinion.

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true heir at law, lessee 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 great hardship to disinherit the heir by a will to make and to attell, for many years. When a great and alarming consideration upon this case, were these, that such an unfinished paper should be deemed a will, and that one person so interested, should be the only witnesses. All the world must see, as from this case was determined, that testators should be delivered up to the pracising clery, and designing men, if such wills and such witnesses were suffered 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 the death of the testator, and you reflect that this case would become the invaluable practice of that court never to ef -\* llev a will unless all the witnesses are examined, because the heir has a right to the proof of fancy from every one of the witnesses that the act has placed about his ancestor. This practice which is receiv’d with the act is a strong ar -\* jument of the natu:ral meaning of the great clause that prevents to confumine dispositions, and that the balance of the witnesses therefore is not barely to attell, but to try, judge and determine, whether the testator is compe: to sign and publish; and yet this duty of the witnesses, this solemn trial of the testator’s fancy has been called a matter of form and of no u:e to prevent frauds. I am of a very contrary opinion. That many fraudulent wills have been made since the statute, and are formally executed, I have no doubt; and I am afraid these frauds will continue to the end of time; for what law can totally extinguish wicked deeds, and reform mankind? But if a law is to be ill-bred, because it does not entirely. eradicate the evil in practice, yet this provision of the statute of frauds can 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 affection cannot be proved) but that a thousand effares have been baxed by this excellent provision. It is called a guard in theory only, whereas almost every delinquent party, that is suffered to dye intestate is preferred by this law, and gives testimony of its utility. But if you once treat this part of the solemnity as a form, and call the devises and legates into the sick man’s chamber, the whole ceremony will then I admit become a mere form; nay it will be worse, it will be a farce to the testator, and instead of being a prevention, 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 sufficiency of fraud appears in this case, yet the statute has preferred a certain method which every one ought te observe in forming honest wills: whether the whole clause of the statute of frauds, the consequence is undeniable, that the incompetency cannot 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 disparage and enervate the whole clause. With this respect, 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 here, but proceeds to pronounce the whole clause to be wholly of no effect, and void. The court admits (every line whereof according to Lord North’s opinion was worth a subdity) turns out to be careless and ill- pened, nothing more than a fruitless and inefficual 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 vanity, and means nothing.—That the epithet credible has a precise meaning universally allowed, and is never used as synonymous to compen -\* tent; that when it is applied to tellimony, it presupposes evidence to have been given; and that after the competen -\* cy of the witness is allowed, the objection to his cre -\* dibility stands, and the proof that he is allowed to give the 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 is not done by any definition it is thought
thought to be plain and obvious that there was no occasion for it, and therefore instead of telling us what the word does mean, the argument only afferts 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 even in common speech be so used, and further in the act of parliament it may bear that meaning, and no other argument is to be drawn from it nor is it to be inferred that I do not 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 perfon of a witness, it bespeaks him to be a perfon of capacity to delere credit; I say of capacity to delere it; I go no further, because no man can be furc of obtaining credit, let him be ever fo credible; and therefore I suspect that the word credibility has been used improperly in the last passage for credit, which means a great deal more.

Now a witnes is credible in two fenes. 1. When they are not denied, or, in other fenes, when the matter of his testimony in a particular cafe comes to be delerieed and tried. A man therefore may be credible in the firft fene, tho' not credible in the second, and yet the word properly used in both. When you apply this epithet to legal witnefes, that law where it is applied must determine the meaning. Now if I ask this general question, who are credible witnefes by the law of England, i. e. persons worthy to obtain credit? if the question is not abroad, I can give but one anfwer, which would perhaps be given to testify of witneces in the courts of Justice: Who are not credible? Thofe who are not so permitted.

The very admittance of the perfon to be examined proves him in the effimation of law to be worthy of credit while he stands unimpeached, by calling him competent.

But when a witnefs's testimony is untried, and I am asked whether such a deponent is a credible witnefs to thofe facts, I must take in a hundred circumftances in order to judge fairly of his credibility good or bad.

In this cafe I admit that you preffume the evidence given, because his credibility then depends not only upon his perfonal character, but likewise upon the evidence given with it; and I am not prepared to make him more particular, and I am certain that he cannot possibly Be better from a third he may obtain credit.—Let his conduct or general character be what they may, he is a credible witnefs to every fect where he has no interefte.

When I fay that all indifferent witnefes are credible, I do not mean to fay equally credible; for credibility may have its degrees; his opinion of a character may make him more credible in one fect than another; but it is sufficient for my purpose if the word is intitled to any degree of credibility.

Now where a man's testimony is impeached, this general character of credibility is no longer confidered otherwife than as a circumftance, and the enquiry is changed into a fuiting of his credibility to the perfon of a difinterested witnefs, that nothing but an infamous judgment can ever deprive him of it; he is difbelieved in one cafe, he is notwithstanding a credible witnefs in the next; he fails there, yet in a third he may obtain credit.

And Lord Coke, when he advices the refractor to call in credible witnefes to attest his will, may mean to recommands the moft credible, fuch as are reputable perfon as well as competent witnefes; yet there is no ground to infer from that expreffion, that any competent witnefs in his opinion was totally non-credible. —But if this be true melancholy prediction, it is confined to an idle nugatory word, as being included in the word witnefs. Admit it for a moment; muft the clause be condemned or lobe any of its weight because an epithet might o p have
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16. 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 those above that character. —

The phraseology of the will is this, that the charity to be bestowed in this will, are those who labour under the extremest 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 must be clear, that to have enough to live upon, with out being a labourer, for a fortune be excluded. 20ly, The poor in this will are denoted by the same description as the parochial poor are by the 43 of Eliza. And if this be so, this charity cannot, by the terms of it, be distributed to a lot of men who are excluded by the will; it will be a breach of truth to do it; and if it be done, the testator and his trustees are as guilty as if they were to distribute it 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 house-keepers, and poor not receiving alms, or to poor in general, there might perhaps be some ground for that distinction; but I can never believe that court could make such a decree in this case; the business of that court being to expound wills, and not to 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 otherwise, and that this is always supposing that the testator's intention in the task of a man living can be fure of that, and I do much doubt it; For why may not a man at the fame time mean to give to the poor and likewise cafe the parifh: The poor's rate is a moft heavy burthen; it falls upon the tenant and occupier, and is paid by those who are not above a degree or two richer, than the object he is forced to relieve, so that he who be to dispose of his effate is a double benefactor.—But be this as it will, if a gift is made to the parochial poor, it must reduce the rate or necessitates, though the testator may possibly intend otherwise.

My brother Gould contends in the next place (with whom my two brothers now-concur) that this benefaction should not be considered as an ex to the parifh, but a bounty to be added to the parifh relief, for the comfort of the poor, and not for their sulphitude.

By the flat. 43 Eliza. the parifhs are only taxable for the neccesary relief of the poor; nothing therefore but neceffity can call for this relief; if the party can fuffit by any means whatsoever without this aid, he is not the object of benefaction. The word poor is here very broad, from whence the pauper is supplied, if he has witherwhilich to subsist, without the parifh; the parifh must be difcharged, because the relief in fuch a cafe is not neccesary: And the neceffity of the object is the rule by which the relief is to be proportioned, and it must be more or lefs according to the pauper's condition and circumstances.

If a labourer, who gets five fhillings a week by his industry, is incumbered with a large impotent family, the parifh adds fo much to his weekly gains, and no more than will be juft enough to keep the family alive; if he falls sick, the allowance is incrased; if his children dye he succeeds the parifh for forty fhillings a year, his fipend will be lefs than his neighbours who has but twenty fhillings a year, and he again will be lefs confined as a man who has nothing. —This is the true reafon why the rate is directed to be paid weekly, or otherwise, because the face of the poor is always fluctuating. —An effeacy or legacy is given to the poor, to relieve the incontinent of the defperate; the parifh rate is cafe if the fafety of the rate is not to be continued. —The parifh is taxed to fave far beyond the fum neceffary for their relief, and fo contrary to the act of parliament. —The benefaction in the one is fuperfluity, in the other, a fubfiftence. This duty upon the parifh is fo connected with the neceffity of the pauper, that if a teftator who bequeaths a legacy to the poor shou'd say, I mean that the poor shall enjoy the fame parifh allowance over and above my legacy, this clause would be fbs de fr and void, unless it can be maintained that he who has something is as poor as when he had nothing; for it he is rich he wants lefs relief, and if it relief, a lower rate will do. So that if the legacy takes place, the parifh of necessity must be eased.

I have been arguing on an allowance of money; suppo- pofe one bequests a legacy to clothe the poor, or a house to receive them, or a fum of money to apprentice our children; muft the parifh flill clothe, lodge, and bind out as many as the poore. Further Gould does not even mean, nor does he choose to deny, that the parifh in this cafe must be eased; but if only a tribe, it is a bounty. — According to what I have said, let it be ever fo small, it muft operate pro tante; but if I should for a moment ad- mit the diffinction, will he be pleafed to draw the line; if he can do that, I may venture to promise that I will come over to his opinion; if he cannot, I think he ought to come over to mine.

Nor can there be any difference between a devife to truffees and a devife to overholders; the truth is the fame in both, and the objects the fame, and the parifh officers are always to be admitted to the advantages of the benefaction; the parifh officers are always the objects. — Neither are parifh officers benefactors, the hands through which the charity paffes, are in both cafes mere instruments. — Neither is there one cafe to fupport my brother's notions, but all the authorities feem the other way; for as often as this question has come before the court in the cafes of penali- ties given by parliament to the poor of the parifh, the court has conftantly held, that the rates would be reduced by thofe sums, and every parifhioner eased from them pro tanto. Upon the whole, this idea of a bounty is no- vel at the bench, and of the firft impofition, and when I was prepared to argue the cafe of Portman and Oxeda upon this ground, the court of King's Bench would not hear me.—Attorney General v. Huygh. 1 P. W. C., 600. Lord Macclesfield, where charity was given to clothe fix poor perifons, rejected every parifhioner because this bequeath would reduce the rate. Lastly, what can be paid upon the falt ufe in this will, to bind our poor chil- dren apprentices; there the parifh muft be cafe unless they are under the age of twenty; then it is there a dufe. To proceed now to the remaining difficulties. — The intereft, it is faid, is nothing claimed under the will; it is nothing at prefent; it is contingent in future; it is a mute.

To the firft, it is not given to the parifhioners; but it is an intereft derived to the parifhioners in conformance of the will; the common cafe of penalties given to the poor; he gains, if the will is eficace; he loses, if it is fec afe.

To the next; it is no efameft at prefent I admit; but in refpect of future cafe it is even now a prefent and a lifting benefit; and in truth (which will anwer the next objection at the fame time) all future interefts, in which there is a mere promise, are in law a real estate, and whatever is enjoyed, are prefent benefits; have a price and are fafeable.

The court of chancery therefore have very fenfibly pronounced poibilities to be vested interefts, and made them transfimmible; a fee exequent upon a thousand years term has been fold for money. — Let me put the case of an execuvory devife of an estate of 10,000/. a year, and the life before it in a deep confusion, (I am intimated to put the strongest cafe I pleafe) could this de- vife be a competent wittens to prove the will? The anwer muft be, he could not; Tell me then what chanoe at a thousand years? Unlefs the life line is drawn, I fafily refi that all chances are valuable.

Hence if it should be faid, that perhaps the parifh may have no poor, I admit the supposition to be poable, and barely so; but if it be only as poable that they may be bastardized with poor, every eale that is dicharged from this poible burden, is in that refpect bettered, and must

remain
remain so as long as the flat of 43 Elia, bands unreap-
ced.—As to the objection that the intent is too minute, and
that a full intent as in Townshend’s case, ought not to
dissuasively witniesse, I do conceive that however that
point might have been litigated formerly; yet that now
that there was a question of the will or what it was
referred, if he has any intent, be it ever to small.—
The point was disputed for above 20 years in the case of toll, a
custom claimed by the city of London upon importation,
called by the name of Water-bailage.—The question was,
whether freemen might be witnisses. —Nothing can be
made of this case as an interest; and yet after much opinons pro and con, it was finally settled that they were
witnisses.—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 Sher.
24. 2 Show. 46. 1 Perf. 351. Case of the City of London
upon a question of toll. This case (and it is the last I can
find upon the subject) happened in 32 Car. 2. and is differently reported in two
books; for one states, that three judges allowed the
witnisses, and one dissented upon which the council for
defendants tendered a bill of exceptions, but the plaintiff
gave it up and called other witnisses. Chancellors in other books
fays, that the freemen were denied to be witnisses, and
that the plaintiff tendered the bill. I cannot reconcile the
books, but both agree the witnisses were not examin-
ed, and the verdict went for defendant.—What became of
the exceptions does not appear.—I should guess it was
accepted and settled solemnly, that freemen could not
be witnisses, because it is said by two Chancellors in
Vernon.

Lord Keeper North in 1684, two years after this trial, 
Vern. 254, says, it was said in the case of the water-
bailage, that no freeman of London could be a witnisse, tho’
it was not evidence to the contrary. In 2 Vern. 318.
(1694.) Lord Somers fays, in a suit for money given to
parishioners, none of the inhabitants ought to be wit-
nisses; for in a case where a party is concerned in inter-
rest, though never so small, the objection has always pre-
vailed; and so resolved on great debate in the case of the City of London concerning water-bailage.—11 Eliz. 2 Car.
Cafe in queen Anne’s time, Brettain against the Corporation
of London, upon suit joined upon prescription for a
toll, the defendants produced a witnisse, the plaintiff ob-
jected, that he was a freeman and interested, upon which the
defendant produced a judgment in the Mayor’s court,
whereupon a ficte facta was awarded, and two milia re-
turned, and the plaintiff pay damages, to the amount of
a pound,—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
stat. 1 Ann. cap. 10, is material for this purpose; for
the act of parliament lets in the evidence of the inhab-
tants of counties in all informations and indictments for
not repairing highways and bridges; so again by another
act the parishioner is admitted for suits to recover money
mispent by parish officers. Which acts fhou’d, that the
rule to reject the witnisse for minute interest could not
be broken in upon by less authority than an act of parlia-
ment. White in his 1753, where it is said, that in case of an information at
the relation of the town of Hwicwich, for certain char-
ties, an inhabitant receiving alms is no witnisse, for every
inhabitant either pays or is under a possibility of paying to
the church and poor, though he pays nothing at present.
—If the rule be fair, it must prevail as an objection, to all
witnisses without objection, and there can be no difference
between witnisses to a will and any other. I say this,
because I fee practice had prevailed to admit will witnisses
where the legacy was small.—In the argument of the
water-bailage case in Vern. 351, and Show. 46. it is faid,
that he gave it up, and that there is no objection to a will,
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
inconsiderable legacy as 5l. or 5l. to a man of quality,
he should be a witnisse 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 was allowed to be a witnisse
in Townshend’s cafe; but that practice ceased, I believe,
upon the flature of frauds. But I take it most clearly,
that this statute is now exploded, and therefore if it fhou’d
be once admitted, that the parishioners in Townshend’s cafe
had an interest under the will, the cafe neither is nor can it
be admitted, that a legatee of a small fum may at this day be a witnisse.

True it is, that the interest of the witnisses in some
cases is drawn foon, that it is scarce perceivable; and
yet that glittering, that jeintilia shall be as powerul to
exclude the witnisse, as the most fundamental policy; and I
think there is a rule, that no good law where the court fét aside the witnisses, because they the hini-
self bound in honour to pay the costs of the fuit.—The
true ground whereof is this, which is fit to be attended
in every part of this branch of the argument, that as no positive law is able to define the quantity of interest
that a mean may have to be a witnisse, upon the minds of men, it is better to leave the rule indefinable, than permit it to be
bent by the discretion of the judge. —The discretion of a
judge is the law of tyrants; it is always unknown; it is
different in different men; it is casual and depends upon
constitution, temper and passion: In the left it is often-
wise a mere caprice; in the right it is every vice, folly
and passion 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 wit-
nisse, not credible at the time, can become so by matter ex post facta, so as to re-establish the will.—If my con-
fidence in frauds is right, it is not good on the attestation is ipso facto void by the very words of the statutes.

The tellator has been betrayed; the fraud is commit-
ted; and you may as soon recall time as make that tran-
saction honest, which was originally fraudulent; no pur-
gation can cleanse the witnisses. I fay, if I have confined the
all right, every such attestation is a conclusive mark of
fraud upon the whole, against which no evidence can be
given; and though it has been faid, that a legacy is no
present interest, and that the legatee does not know the
contents of the will; I answer, that if it fhall be once
held, that such a will may be established by the legatee’s
release, every legatee who intends a fraud will always for
the future be sure of the contents before he attests. But
still it is urged, that if you pay or release the legatee, he is
a good witnisse; his bias is gone; the will shall be estab-
lished. It is hard to fay whether this doctrine is more
pregnant with mischief or absurdity. —It furnishes the
will-makers with bribes to the witnisses out of the tella-
tor’s pocket; and the tellator’s interest, in the which no
honour is it possible to give the witnisses a stronger security
for his legacy than by making him a witnisse, 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 device to pay the witnisses his hire
before, under the penalty of forfeiting the will abide he re-
fects. —But the mischief will not flop here; the lega-
tee will naturally proportion his demand to the value of
the estate bequeathed, and will frequently exact more
than his legacy. —Nay he will think it worth while to
hold himself out to the heir, and keep the will in fuf-
times alive; in that way he makes the general price of
prices, and thus the tellator’s land after his decease will be
sold by the witnisses to the bidder bidder.—To day the will is bad; for the legatee will not release; to morrow the legatee
is satisfied, and the will is good; —the heir at law
recovers in one term, and is dishonoured in the next.

In this state of uncertainty the wish must remain till
the legatee is pleased to pronounce its fate.—But suppose
the witnisses shou’d die before he has released;— may
put the cafe, that he dies before the tellator; is the will good
or bad? if good, he is a credible witnisse and needs no
purgation; if bad, he is not credible and incapable of purgation.

Again, let us suppose the witnisses convic’d of some
infamous crime; can the crown enforce the will by a par-
don? In that cafe, it depends upon a casuallty, and the
King disposes of the estate. Among all these difficulties,
one should have expected some rule should have been laid
down to a certain period for theEstablishing or annul-

VOL. II. NO. 137.
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iln^of the wili by telling us how long the witnefs's incompetency fhall continue to vitiate the inftrument ; for
it is impofliWe to conceive that it can remain in this rtate
of fluiSluation,
I have endeavoured to find out this point of time from
It is
the argument on the other fide wiihout fuccefs.
faid indeed, that the time of examination could not
be the criterion, on which the will v;as to de-

poffibly

if

ftrument to all intents and purpofes. Thus if the Common law rule could be adapted to the conftruftion of this
ftat. it would not make the devife void, but get rid of it
by payment, allowing it to be good
and indeed this
analogy did prevail fo ftrongly, that it grew to be a
;

common

opinion, that where a legacy only was given to
upon tie iand, a releafe would

pend, bccaufe the witneffes might not live to be examined, and their incompetency might arife long after their

a witnefs, tho' charged

do m.oft clearly conceive, that this cannot
be the criterion ; the only fixed period remaining is the
time of atteftation, but the v^hole argument on the other
fide is brought to prove that that point of time cannot be

the atteftation

figning.

I

the criterion

fo that both thefe periods being excluded,

;

it

doth behove the counfel for the defendants to point out
fome other; but the argument i« filcnt and the will is left
at laft after fo much pains to float upon that fea of cahave been

fualties I

defcribing_.

received ufage with the opinion of eminent praflitioners has been called in aid, and they have
been named, Mr. Fa%akerly and Sir Thomas Booth.

The common

They

and I have a high regard for
general praiSlice too of the hall
argument, and (hould never be

names,

are great

The

their opinions.

always a weighty
I do not find that this prai^ice, as it is called,
ever went beyond the cafes of money legacies, which
is

flighted.

—

as I guef?,

fprung up,
court,

good

where
but

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prevailed fo

from the praftice

a releafe to this day will

not pretended

is

to

far as

reftore the witnefs

admit

a

that this
releafe

where he was

or

fpiritual

the

in

make

the witnefs
pradlice ever

payment

to

So

far

a real devifee

:

from it, that Hilliard and Jennings palled always for law
without a murmur; and it was not till after the true
principle of the flat, of frauds came to be thoroughly
difcufTed and fettled in the cafe of Anjiy and Dowjing,
that

thofe pradlices

came

Then

to be allowed.

were opened, and they began to

their eyes

fear,

indeed
that

if

the court of King's Bench was right, the praflice and
but as the principle
their opinions were erroneous ;
was ftubborn, and would not yield to any exceptions,
the legiflature very properly took it in hand, and have
with great wifdom cured the evil, without weakening
the flat, of frauds j which no court of juftice was able to

But

thefe

if

points

to another point,

and
tion

this

is,

may

fall,

the defendant's counfel refort

which will

at

once

falve all difficulties

the witnefs notwithftanding the objecremain a good witnefs to every other de-

that

ftill

vife but his

:

—

now

taken,

who by making

cafe have difabled the witnefs
this

It

the devife void

from being

has effe£lually cured every

every mifchief.

in this

and
;
and removed

a devifee

difficulty

remains then to be confidered, whe-

ther the atteftation of a legatee before the aft

made

his

for I muft infift upon it that he
;
can never be a credible witnefs to any part upon any other
If
ground than the original nullity of his own legacy.

legacy abfolutely void

intereft attaches at the
is not void, then his
very inftant of the atteftation, and vitiates the whole will
for ever, unlefs the faft can be purged afterwards by releafe.
Now that the gift or legacy is void, I do beg leave,
with great deference to other opinions, to deny, in all thofe
cafes ; if I am not miftaken, the only reafon why the
Conwitnefs is rejefted, is, becaufe his legacy is good.
fider the cafe of a uill before the fiat, if attefted by the
legatee ; not void in its creation ; it was only held back
from operating by defeft of proof; and therefore the
moment the proof was of ened either by payment or releafe,

the legacy

— Again,

was not void by
by the laft aft of parliament, which does not confirm any former will liable to
bufinefs.

the objeftion

—Whereas

that the legacy

further proved

is

the legacy

till

either

is

paid

the fame aft declares that in

for the future the legacy fhall be void.

—

or
all

tendered.

fuch wills

It is from hence
obfervable, that the legiflature avoided giving any opinion upon this ligitated queftion upon the ftat. of frauds;
yet they declare in the ftrongeft manner that the legacies
fo given to the witnefs were not void, and that it- required a neiv law, to make them void for the future.
Let me add to this, the common opinion of the bar, fo
much relied upon in the former part of the arguchenf, that

the

was

legacy

fo efFeftaal

to

difable

the witnefs that

would enable him to prove the
will, for any body's benefit.
I wonder a little why fo
much pains is taken in this argument to eftablifh the
praftice of releafing, if the legacy was a nullity and
wanted nO releafe ; for if this laft was law, that method
was not only nugatory but unjuft, and the parliament
muft be charged with the fame injuftice, in direfting fo
many void legacies, to be paid. But if I have expounded
the ftat. right, where a devifee is a witne's, the whole
nothing

than a

lefs

releafe

—

—

fraudulent ab

will

is

The

publication

difpofition

initio,

one

is

and

it

cannot be otherwife.
the will is one
;

intire tranfaftion

of the teftator'i eftate to feveral perfons; the

bequefts, are fettled and apportioned, by

acomparifon with
you garble the will by the taking
out particular bequefts, you vary the teftator's intention
in the remainder, and his whole will i> maimed.
In cafe
of fraud {'for the argument muft always remember that thefe
were the cafes which the aft intended to prevent) the
each other

;

and

if

—

witnefs gets his legacy by the merit of attefting the other
the grand devifee will hardly ever be a witnefs j, and it is by the other part of the will that the heir
bequefts ("for

undone

remainder of the will,
ten times worfe than
Let us now fee how
that part which is to be annulled.
this point ftands upon the cafe of Hilliard and Jennings
faid to be an authority, and fo proved in Baugh and Holgenerally

which

the legatee

fo that the

;

is

to eftablifh,

is

—

loway.

own.

can be done, it will be a method of fetting up
the will by annulling the legacy ; for a legacy that cannot be proved is the fame as no legacy at all ; it is a
De non apparenubus, et non
nullity; it does not exift
txijicntihus, eadem ejl Lex et Ratio.
This I do admit will folve all difficulties at once, and
will render the legatee as fafe and difintercfied a witnefs
And if this had been law, it
as if he had no legacy.
would have faved the legiflature the trouble of a new
acS ; for it is the very method which the parliament
If this

has

do the

is

do.

L

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the will could have been proved by other witnefTej
tho' the devifee was one, the will came forth a valid in-

or

This requires fome examination. In Baugh and HolRaymond does fay very confidently,
that Lord Ch. J. Holt
if that reporter is not miftaken,
had declared his opinion in Hilliard and Jennings for, and

loway, where Sir Robert

there

an expreifion

is

which feems
in the

fome

former part of

fo fully,

point

in

that

it

Carthew's report of that cafe,
I have

in

fort to favour, the doftrine.

my

argument examined that

cafe,

will be fufficient here to obferve ih?.t this

was neither

refolved,

nor argued, nor hinted at in

it was
impoffible, that the
could atife upon that will which contained only
If that be fo, as it is,
one fingle bequeft of a real eftate.
it would have been a moft extroardinary things if the

Hilliard and Jennings

;

and

point

court
fettle

—

had
this

fpontaneoufly taken upon
important point, tending to

themfelves

no

lefs

to

confe-

quence than a virtual repeal of the ftat. of frauds; it
would have been ftrange, I fay, to have done this without a cafe or a reafon to fupport it ; when the point too
was collateral to the queftion before them, and neither
touched by the counfel, nor argued by themfelves: I do
not wonder Sir Robert Raymond ft^ould argue as it is pretended, for his fee ; the bar is apt to argue in that
manner; nor do I wonder the court fhould in fo ftale a
But I can by no
bufinefs fend the plaintiff to law.
means conclude, that becaufe the cafe never came back,
that the heir at lavi- gave up the point; why might it
I could make 20 conjeftures
not end by compromife
that (hould all account for the difcontinuance of the caufe
more probably than that But it is not worth while j
becaufe

—

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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 into the argument, and will close with declaring that I will take no notice of any part of the law hereafter that has been brought into the 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 Adam, where, after he had fully argued the case without taking any other notice of the civil laws, then to declare that Swainson's law upon legacies cannot be applied to land devises, and to observe in the same place that both laws concur in rejecting intestate wills, he concluded in these words. Upon the whole, conditionem testam suum dignitatem intestitius delirem, and as that 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 upon, 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 show 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 the English, so as to announce (which was the judge's) that although almost every country in Europe have received that body of laws, yet they have been with a most stubborn confidence at all times disdained and rejected by England. For which reason, and not th'o' any disrespect to the argument I have been endeavouring to an- swer, I choose to say still that learning is not being relevant in Westminster Hall.

7. Of uncounpaitive wills.

By the statute 29 Car. 2. c. 3. f. 19. For the preventing fraudulent practices, etc., it enacted, 1. That no nuncpative will shall be good where the estate thereby bequeathed shall exceed the value of 30 pounds, that is not proved by the oaths of three witnesses, at the death, that were present at the making thereof, and bid by the testa- tor to bear witnesses that such was his will, or to that effect. And by 4. Ann. c. 16. § 14. it is declared, That all such wills, being of a nature and ought not 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 nuncpative will, or any thing relating there- to.

Nor unless such nuncpative will were made in the time of the last sicknesh of the deceased, and in the house of her or his habitation or dwelling, or where he or she has been resident for ten days, or more, next before the making of such will, except where such perfun was pur- prised or taken sick, being from his own home, and died before he returned to the place of his her or her dwelling. Sect. 21. Six months passed after the speaking of the testatorial words, no testament shall be received to prove any nuncpative will, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.

Sect. 21. That no letters testatorial, or probate of any nuncpative will, shall pass the seal of any court, till fourteen days, at the death, after the decease of the testator be fully expired, nor shall any nuncpative will be at any time received to be proved, unless proofs have been ill used to call in the widow, or the next of kindred to the deceased, to the end they may control the same, if they please.

Sect. 22. 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 same be in the life the testator committed to writing, and after the writing thereof read to the testator, and allowed by him, and proved to be done by three witnesses at the seal.

Sect. 23. Provided that any folder in actual military service, or any officer in the army, or any voluntarily enlisted man, may dispose 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 Be. Wilt. 2000. to F. Dev. 100. to Reh. Ctes. 50. to Fol. Cves., and set several others in like manner, to above 400. which being more than her estate, B. made an alteration in the second column, by subordinat- ing part of the sum of the legates, as set down in the second column, and then told A. the sense of the pro- posed devises: There were two persons in the room that did not see the deed. A. then said, "I am over 1800, but only hard the testatrix at last pronounce, that all was well. B. went to a scrivener to have the de- vises 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 in this case it was agreed that what B. had written in words at length, so as they had carried a sense 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 such as this, which in the opinion of the judges it appeared on all hands, by several wills, to be the case. A. then said then seriously disposed herself to make her will; and for that was quoted the case of one Pepper, where a person dis- posed herself to make her will, and dictated it to a per- son who wrote it down; and another, not called in as witnesses, by the hanging, out of care of, and yet this will was allowed to be good, being proved by these two witnesses: But they distinguished this case be- cause the will was not substantival, but was to take its sense from the interpretation of the witnesses; and so there would be wantonness upon innuendo, which made purely a nuncpative will: And as such, not being attested by the number of witnesses appointed by the statute of frauds and perjuries, the will and legacies were void. 1 At. Ep. Cof. 403.

Dr. Shalmer, by will in writing, gave 200. to the parish of St. Clement's Danes, and after, Prew the rector coming to pray with him, his wife put him in mind to give 300. more, being charges building a church, at which, tho' the Dr. Shalmer was at first dissatisfied, yet after, he said he would give it, and bid Prew take notice of it: And the next day he bid Prew remem- ber of what he had said to him the day before, and died that day. Within three or four days after, the doctor's wife puts down a memorandum in writing before the said Prew his 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 300. and purporting that he had put it in writing the same day it was given. But the writing was found to have been atten- tioned to be made the same day it was fp ken did not appear, and the three memorandums did not expressly agree. About a year after, on application by the par- ticular to the commissioners of charitable uses, and produc- ing these memorandums and proof by Mrs. Shalmer and her maid, they declared the 300. but on the exceptions taken by the executor, the decree was discharged of this 200. and Lord Chancellor held it not good, be- cause 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. 1 At. Ep. Cof. 404. A daughter deposits 180. in the hands of her mother (the defendant), and afterwards makes her will in writing, and thereby devies several legacies, and makes 3
But when a testament is perfect by the death of the party, it is effectually gives and transfers estates, and makes such estates in lands and tenements, and is executed by deeds in the life-time of the parties: For hereby defents of lands are prevented. And a man may make effates in fee-simple, or fee-tail, for life or years, of lands, testaments, rents, reversions or services, as effectually as by deed; and these effates also will be good without any delivery: But if the testator have power and power to direct for them, may be referred, conditions created and annexed to effates or things devised. Steph. Abr. part 4. p. 10. Voci. Tif.

And therefore they take by deeds of land, are said to take in the nature of purchasers.

And every one of the parties, in this case makes a feoffment to the use of himself in fee, and after devises the same to his wife in fee, and dies, the fo is not reputed though the father dies feoffed, for the devise prevents the defect.

It is to be observed, that where the words of a will have a plain sense, 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 devisor, and his intent to be what the words say. 2 And. 17. Lenten v. Bixby.

That all the words of a will are to be carried to answer the intent of the devise; but this is to be understood in cases where the intent of the party may be known by the words used, and the common sense of the world.

That if there be inconsistent and contradictory words in a will, some words must be rejected to make it fite.

Thus where a testator gave the interest of a sum of 600l. to Mary Conforte, his daughter, for her life, and after her decease gave the money between Charles Conforte her husband, and their children: And in another part of the will he said, and in case there be no such child or children, I give it to Charles Conforte and such children.

—Lord Chancellor rejected these latter words, as they were absurd and contradictory. 5 Bac. Abr. 525. MSS. Rep. Bonn v. Conforte, Pars. 2. 4. 2. in Chan.

A having a wife and children, made his will, and said, that if it should please God that he should not return, he gave and devised a real and personal effate, or to that effect.

He returns, has children and dies, without altering his will: The plaintiff being a legatee, and there being a direction in the will, for the sale of the real eftate to pay his legacy; Lord Chancellor was of opinion, that the direction was merely contingent, and that no part of the will was to take effect but on the contingency of his return; and fo avoided determining the principal question, how far the alteration of the testator's circumstances would be a prepotent revocation as to the real and personal eftate, but as to the personalty, seemed to rely on the case of the estate of Lord w. in the case of Abbot v. Shep. 22 E. 2. in Chan. 124.

If the testator had said, that the statute of frauds and perjuries made a material difference between that and the personal eftate.

5 Bac. Abr. 525. MSS. Rep. Parsons v. Lennox, Hill. 22 Geo. 2. in Chan.

That a will must have a fufficient interpretation, and as near to the mind and intent of the testator as may be, and yet fo vitiated as his intent may fland with the rules of law, and not be repugnent thereunto: it being a rule or maxim of law, Quod ultima voluntas testatoris perimendo ffit, feendum verum intentionem; and that, sed légum fervanda fides, suprema voluntas quod mandat fornitus jure partes recedere effe. 1 Inf. 112. 4 Rep. 61. b. Forbe v. Hemsling's cafe.

And for this reason a man may alter or make void his will at his pleasure; and he may make as many new wills and testaments as he pleases, and there is no way to bar a man of this liberty. Steph. Abr. part 4. p. 5. Voci. Tif.

And the latter effament always revokes and overthrows the former: But otherwise it is of a codicil, for a man may make as many of these as he will, and make no testament at all: Or if he makes a testament, he may afterwards make as many codicils as he will, and one of them will not overthrow the other; for in the first cafe they must be all annexed to the letters of administration, and the administrator must perform them; and in the latter case they must be all annexed to the testament, and the executor must take care to perform them. Lit. 168. Stewb. p. 1. Ixt. 5. Br. Tifament. 200.


In grants therefore the fift is of the greatest force, but in testaments the half is of greatest force. 1 Inf. 112. 8.
That the clauses and sentences of a will shall be severally transposed to serve the meaning of it. And contrariwise it shall be made of the words to satisfy the intent, and they shall be put in such order as the intent may be farthest to serve the meaning of it.

That no sense may be framed upon the words of a will, wherein the sessor's meaning cannot be found. Id. ibid.

That to give a thing to such a person to whom the law gives it, is as if it had not been given; and so a devise of man's land to his heir is void. St. 49, 149.

That a construction of a will must be gathered out of the words of the will, and not by any averment. See Ap. part 11. p. 11. Fos. Tril.

That though a parol averment shall not be admitted to explain a will, so as to expound it contrary to the impo- sition of assizes, so when 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 effect. 1 Freem. 297. Sedale v. Berrier. 5 Rep. 68. Lord Chet- noy's case.

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 estate tail. 2 Freem. 267. Banfield v. Pigley. Fos. 200; 309. 33 Grot. 2. Strong. Clerk, v. Teest, lecile of Meryng et al.

This was a writ of error, brought upon 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 Mercyngs; and all former deeds, not neces- sary to be here taken notice of, (as no quittance at all arises upon them.)

Then it finds that Audley Meryng, Esq; and Henry his son, on the marriage of the said Henry with Mrs. Thoburn, executed deeds of lease and release 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 Arlethorn in Tyrone, (of which the premises in quittance are part,) was settled, in first fit- tlement on the said Audley (the father) for life; then on the said Henry (his son) for life; then on the son, and for other sons of Henry, &c. and the issue of that mar- riage (in common form,) with several terms, powers, and provisos; with the release in fee to the said Aud- ley, the father, (which marriage took effect: But there was no issue of the said marriage.)

That Audley Meryng had issue, besides the said Henry (his elder son,) three other sons, viz. Audley, James, and Theophilus; and four daughters, viz. Lucy, (who, in her father's life-time, married with Wenthworth Harman,) Eleanor, (one of the letters of the plaintiff, who and who- wards married Christopher Fawcett, who has been many years dead,) Anne, (one of the letters of the plaintiff, who married James Meryng, otherwise Richardson, long since dead,) and Jane.

And the said Audley the elder, being feised as the law requires, of the said lands and tenements, on the 15th of June 1717, duly made and published his will flat and relinquished the same, whereby, after receiving that he was devising to make the best provision in his power, for the support of his children and the peace and settle- ment of his family, he devised as follows; viz. And as to the worldly estate wherewith he hath pleased God to bless me, I give and bequeath the same, in manner fol- lowing, to my wife Meryng, (which estate the said Meryng, 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 harness, and three faddle-horses. I also confitute and appoint my said dear wife sole executrix and is in all my will and confumt and that all and every of my said bequeaths unto her all the rest and residue of my personal estate, of what kind soever. And I do hereby will and require my said executrix, as soon as the conveniently can, after my death, to sell all the rest of my horses and all my flock of cattle; and to apply the money arising by such sale, and all such debts as are or shall at the time of my death be due to me, (particularly the debt of Richard late Earl of Bellings,) to the use of my said executrix, in the way of affording the estate of Richard late Earl of Bellings, converted into the sum of 1000L. due to me by my son Henry Meryng; and a debt of 1000L. or 1200L. due to me by Hugh Meryng; and all also all arrears of rents which are or shall become due un- to me, to the payment and discharge of such farms of mo- ney as shall be due to me, by any son or sons, or per- sons, at the time of my death; and to the intent that the devise may be honestly and truly paid and discharged.

I do hereby give and devise to my said dear wife Olivia and her heirs, all that and whom the town lands and tene- ments, &c. (specifying them by their particular names, and denominating the same as parcel or separate situate lying and being in the county of Tyrone; as also all and every the town and lands of Gt, which all last mentioned situate lying and being in the barony of Donegool and county of Meath; and also all other the town lands tenements and here- ditaments in the said county of Tyrone and Meath or either of them, whereof I am feised in fee-fimple, or of which any other person is feised in trust for me, or together with their and every of their appurtenances; to the use intent and purpose that my said dear wife shall take and receive out of the said lands, as an addition to her joint- ury, one annuity or yearly rent-charge of 100L. per annum during her natural life, and will, and to the heirs male of her body, and for failure of the same, the following, viz. To my dear wife during her natural life, viz. to the use of my son Audley Meryng, for and during his natural life; and from and after his death, to the use of his first and every other son and all his heirs and succes- sive. And as to so much part of the said lands and tenements as shall remain unford, to the use following, (which nevertheless to the payment of the said sum of 100L. per annum to my said dear wife during her natural life,) viz. to the use of my son James Meryng, for and during his natural life; and from and after his death, to the use of his first and every other son and all his heirs and succes- sive, and to the heirs male of his body, and for failure of such issue, to the use of my son Theophilus, for and during his natural life; and from and after his death, to the use of his first and every other son and all his heirs and succes- sive, and to the heirs male of his body, and for failure of such issue, to the use of my son James; and during his natural life; and from and after his death, to the use of his first and every other son and all his heirs and succes- sive, and to the heirs male of his body, and for failure of such issue, to the use of my son Eleanor; and during his natural life; and from and after his death, to the use of his first and every other son and all his heirs and succes- sive, and to the heirs male of his body, and for failure of such issue, to the use of my son Audley, and to the use of my son James, and to the use of my son Theophilus, and to the use of my son James; and during his natural life; and from and after his death, to the use of his first and every other son and all his heirs and succes- sive, and to the heirs male of his body, and for failure of such issue, to the use of my son Meryng Archibald and Henry Cargy, my nephews, and their heirs.

And it is my further will and intention, and I do hereby devise, that it if shall so happen, that my sons Henry and Audley shall both of them die without issue male, in the life-time of my son James, whereas the estate settled upon my son Henry, upon his marriage, shall descend, come or remain unto my said son James, that then and in such case, my said son James shall not take any interest or estate in the lands and tenements herein mentioned he is already devised unto him but that the same shall remain unford, and go over to my son Theophilus, according to such interest and estate as is herein before to devise for want of issue male of my said son James.

And I will and devise that my executrix shall have full power and authority, by her will and testament in writing, to dispose of all my lands and tenements herein mentioned, with such powers and provisions for all or any of my daughters, as the shall think reasonable.

And it is my further will and intention, that whoever of my sons shall be feised of an estate or for life in the said lands, shall be entitled to dispose of the same, or to also to settle a jointure on any woman be she married in pro- portion to her fortune; and likewise to make Leases for 9 R. one
one two or three lives, or 21 years, at the highest rent that can be had from a solvent tenant.

And whereas, by the settlement made upon the marriage of my son Henry, I have power to charge the estate testified on my said fon with the sum of 5000/. for the payment of my younger children; I do hereby will and direct my executors, immediately after my death to receive the said sum of 5000/. for the use of my younger children, and to apply the interest thereof to their education and maintenance, in such manner as the shall think fit, and to dispose of the surplus thereof in manner following, that is to say, to my said sons James and Theophilus and my said daughters Eleanor, Anne, and Jane, the sum of 500/. each, at such time as he or she may marry or attain the age of 21 years, (which shall first happen.)

And in case any of my said sons or daughters shall die unmarried and before the age of 21 years, I will that my said executor shall divide amongst the survivors of my said sons James and Theophilus and my said daughters Eleanor, Anne, and Jane, the sum of 500/. defiged for him or her so dying, in such manner as the shall think fitting.

And I also will and devise, that in case my several lands herein mentioned, or any of them, shall by virtue of this will remain and come to my said son Henry, that my said executor shall have power and authority to charge and incumber the same with any sum not exceeding the sum of 5000/. feeling, for the use and advantage of such of my children as shall be then alive and unmarried, as shall be agreed to their portions.

The same fined that the said Audley the elder, at the time of making the said will, and at his death, was seized in fee, in possession, of the lands defied by express denominations in his said will, as in his said will; and likewise seized in fee, in possession, at the same time, of the lands of Gormere in the county of Tyrone of about 200 acres and the lands in Tyrone expressly defied by the said will, (including the value of Gormere) were of the yearly value of 500/. and that the estate settled by the deed of the 22d of December 1711, was in the year 1720 or 1721, of the yearly value of 1800/.

That the said Audley Moryan died on the 17th of June 1717, seized as the said tenant, of the lands and premises comprised in the said settlement of the 22d of December 1711; of which, the lands and premises in question are part. And upon his the said Audley the elder’s death, his eldest son and heir at law, Henry, became seized thereof as the said tenant; and being so seized, he the said Henry by his release of 20th and 29th of September 1729, in consideration of 1500/. paid, granted and re-seized the premises in question to John Strong, clerk, his heirs and assigns; which said John Strong entered, and continued the possession during his life. On the 9th of March 1744 John Strong died seized; and on his death, James Strong, his eldest son and heir, entered, and continued the quiet possession till the 11th of June 1756.

Olivia Moryan, who was wife and widow to Audley the father, died in the year 1720.

James Moryan, son of Audley the elder, died in 1726, unmarried, and without issue.

Jane Moryan died in 1725, unmarried and without issue.

Theophilus Moryan died in 1736, unmarried and without issue.

Lucy Harman died in 1737; leaving Henry Harman, one of the leffor of the plaintiff, her eldest son and heir.

Mary the wife of Henry Moryan, died in 1735, having never had issue by the said Henry.

Audley the younger, died in 1746, unmarried and without issue.

Henry the eldest son, (there called Henry the younger), died on the 9th of February 1747, having never had issue.

Moryan Archiball, in the will mentioned, died in 1727.

Henry Cary, survived him; and died in September 1750.

Hugh Moryan, son of Audley Moryan, died in 1727, leaving the said Arthur Moryan, one of the leffor of the plaintiff, his eldest son and heir.

The same fined that the leffor of the plaintiff, before making the lefles in the declaration mentioned, entered and were teiled, 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 trophias, &c. the jury doth know and understand.

The court of King’s Bench in Ireland gave judgment for the plaintiff in ejectment.

The whole eftate, which depended upon the title fet up by the lefles 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 court there held, that the reservation in fee of the lands comprised in the settlement of 1711, passed by the will; and that the uses were legal eftates 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, the devise after an indefinite payment of such of the tenant’s debts as should not be discharged by his personal eftate.

This case was first argued in Michaelmas term last, by Mr. Perret for the plaintiff in error, and Mr. Wm. for the defendant in error; but more fully a second time, on Tuesday last, the 26th of January 1756, by Mr. Nisbet for the plaintiff in error, and Mr. Thos. 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 lefles of the plaintiff in the ejectment had any legal eftate; the counsel for the defendants in the ejectment insisting, that Olivia took the legal eftate, which fenced (they said) to Henry the eldest son and heir, and was by him conveyed to the father of the defendant in ejectment: Or if the did not, “That the devises thereof after payment of debts generally, were executory and too remote.”

This point concluded to a nulleft 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.

On which Mr. Kentuli was beginning to make his reply: But Lord Mansfield said, they need not give him the trouble of a reply.

The quaellions are two; viz. (1) Whether the reversion be within the devise; and if it be (2dly) Whether it is a good devise to the lefles of the plaintiff.

If the first point be determined in favor of the plaintiff, 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 merits of the case, which will afford attention: But as 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 &c. That was not to the truftees and their heirs “to the use of him and their heirs” (as Mr. Nisbet 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 tale debts, &c. should be paid, then it is to be restituted to the tenant or his heirs.”

This case, in ejectment, was determined for the plaintiff, with costs, to be paid by the defendants to the use of his nephew Thomas Bagshawe, (to one moiety) for life without impeachment of waste; remainders to truftees (by name) to preserve contingent remainder; remainder to the heirs of the body of Thomas, in strict settlement; remainders to Benjamin Bagshawe for life; then to trustees to preserve contingent remainder,
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minders; and after the decease of Benjamin, then to the heirs of his body lawfully begotten. Great debts were due from the tefator; and money was railed to pay them.

Thomast Baghaw died without issue: And Benjamin entered and appoited himself tenant in tail in poftition; and being so in poftition, the said Benjamin Baghaw suffered a common recovery; and then deviﬁed it to his wife. A bill was brought by the wife (claiming under the recovery,) for every truft into execution; and for a conveyance in fee: And there was a decree at the Rolls to carry them into execution accordingly.

The litigation was between the remainder man and the devisee of Benjamin: And the question was, "Whether Benjamin Baghaw was tenant for life, or in tail?" and the master of the Rolls took it to be an efate in tail in Benjamin Baghaw. The plaintiff claimed under the common recovery suffered by Benjamin: The defendants under the will of Benjamin Ashtom, the original deviwer. Neither party doubted of its being a truft; but the difpute was about the efate deviﬁed to Benjamin Baghaw: "Whether it was for life, or in tail?"

But my Lord Chancellor started a doubt, "Whether the deviﬁe to Benjamin Baghaw was a truft; or whether it was a life executed." And if it had come out to have been a life executed, then the authority in the cafe of Cauifen v. Cauifen, and the certificate given by this court in that cafe, would have ﬂood in the way; and he would have been considered by this court. But if it was a truft, then it fell under different confideraﬁons.

There the truﬄees and their heirs and the survivor of them were directed to do three things: And what they were to do, was of such a nature, that they mufi necefrarily have a defendable efate in them, to anfwer the ends of the truﬂ. But there arose a deﬁcive dilemma; which put an end to its being a queftion. The plaintiff claimed under the common recovery. But the tefator's debts were not paid at the time of fuffering it. It was urged on behalf of the plaintiff, "That Benjamin Baghaw took by executory deviﬁe after the debts should be paid; and that there was no danger of a perpetuity." But it was allowed that there was a legal efate in the truﬄees, till the debts were paid.

Now, if the legal efate had not taken efefct in poftiﬁon in Benjamin Baghaw, then there was no good efate: for it would be then an ineferable tenant to the preciouf predilec to have done. Therefore they were obliged to maintain it to be a truﬂ: For if they had inﬁlied on the authority of Cauifen v. Cauifen, that the common recovery was a bad one.

So that that cafe of Baghaw and Spencer was not applicable to the present cafe now before us.

I thought it not improper to lay thus much, as to the cafe that have been cited: But I give no fort of opinion upon the present cafe as to this point. It might be worth confidering too, "Whether this be not a double contingency?" viz. If there should be debts, then, my wife to have a life efate, I might have had a deviﬁe effect. If no debts, then, theirs 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 necessary 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 this beingly this: His lordship then fummarily ﬂated the fafts found by the fpecial verdict, and particularly the settlement in Decem- ber 1711; the circumstances of the family; the will; and the general claufe on which the queftion arifes: And then the cafe was followed as follows:

The queftion is, "Whether by this sweeping reﬁduary claufe, the tefator intended to deviﬁe the reversion of the efate fettled on the marriage of his elfeﬁ for Henry with Mary Tichburn, by the fettlement of December 1711." The generality of the exprefion, "And also all other the land, tenements and hereditaments in the faid coun-
ties of Tyvecy and Monfh or either of them, whereas I am feated in fee simple, or of which any other person is feated in truft for me, together with their, and every of their appurtenances;" if unreftrained and unqualiﬁed by other words, would carry all the tefator’s efate in poftiﬁon into efate in fee.

But thofe general words may, by either words and exprefions in the will, be reftrained to any or either of thefe: And it is the fame thing, whether it be direcfly exprefsed, or clearly and plainly to be collected from the will.

Now here are plain exprefions in this cafe, which are fully fuficient to fhew, that the tefator did not intend to deviﬁe the reversion of this fettled efate. One in- fance is, the claufe "That if Henry and Audley fhould both of them die without issue male in the life-time of James, then James fhould not take any intereft or efate in the lands and tenements therein before deviﬁed to him; but that the fame fhould remain and go over to Tophibias." Every part of this claufe is incompatible with any exprefion, that he meant to deviﬁe the reversion of the lands in feftation. And there is another claufe which makes it clear, viz. "That if he fhould or any of his lands fhould by virtue of his will remain to his son Henry, that then his executrix fhould have power and authority to charge and incumber the fame with any fun not exceeding the form of 5000l." So that he fop- pofed every thing mentioned in, and deviﬁed by his will without the reversion of the fettled efate after the death of Henry, never could come to Henry. From whence it follows, that the tefator 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 feated of an efate or life for life in the faid lands, to commit way, to fectic jointures, and to make leafe;" Which powers were, in their nature, applicable to poftiﬁons, and not to reversions, and are referred, by the exprefls words of the will, (viz. 4 in the faid lands,) to lands only, as what he meant to de- viﬁe. And they could never take effect at all in Henry (who was one of the fons;) for he had them before, and did not want any authority to exercise them.

If Henry had had no issue male by his firit wife Mary Tichburn; and had had issue male by a fecond wife; the fon by the fecond wife could never have taken any thing; tho’ he would have been grandfon of the tefator and great-grandfon of the family; fo that the heir of the family would have been the same, wether he were grandfon or great-grandfon.

And yet the reafon why Henry and his issue by this will poftponed to the younger brothers, appears plainly to be, "because they were much better provided for." And the tefator understood and fuppofed that the fecond wife, lands, would deviﬁe all the issue male of Henry should have the efate in their turns.

Suppofe Henry and Audley the younger both dead with- out issue male; then James muft, upon the confufion of the reversion’s paffing by the will, forfeit ever ything; not only the lands fettled, but also the lands deviﬁed; and would not have a f(getContext "But the whole efate muff go over, and pafs by him; for the reversion of the fettled land being in fuch cafe fallen in, by the death of Henry without issue of his firit marriage, the whole fett- led efate muft go over to Tophibias under fuch a confufion of the will, and by the exprefs words of it, he could take no inteff in any of the reft.

If the queftion had arifen between the issue male of Henry, which he might have happened to have by a fe- cond wife; could it poftibly be imagined to have been intended by the tefator, that in fuch a cafe, Henry’s fons by a fecond wife fhould be totally difinherited? And yet the cafe was followed as above, if the reversion of the fett- led efate pafﬁed by this deviﬁe.

If Audley had died without issue male, whilst there were fons or male deﬁendants of Henry by a fecond marriage, in being; can it be imagined that the tefator ever thought that James and his issue male fhould take the fettled efate, in exclusion of the oldest branch of the family? And yet he would have done so, after Henry’s death.
death without issue of his first marriage, it is the reversion of it passed by the will.

Or if there had been no issue at all of either Henry or Audley, can it be imagined that he intended to dismiss it?

It is plain, if the testator did not intend to devise the reversion of the lands comprised in the settlement made upon the marriage of Henry. Probably, he himself, or the person who drew his will, did not imagine that he had any interest or power in the settled lands. But it is plain, at least, that he meant, and had then in contemplation, only the lands whereof he was seised in fee in possession.

He described several lands nominatim; and others, as well as he then could: But as he could not be minute and particular in such descriptions, it was thought proper to add general words. The lands he meant to devise, were either in the county of Tyrone or of Meath; but, it being then uncertain to him, in which county they lay, he says, "in them or either of them." But still, the whole description is local; and a locality is tied up to lands: The former part of the devise specifies them particularly by name; and the general sweeping words are only descriptive of lands; "All other the lands tenements and hereditaments in the said counties &c." If it had been intended to have carried estates, the drawer of the will would have added. "And all his estates wherein he or any person in truth for him, were seised in fee, in possession, remainder or reversion," that is, he would have thrown in a sweeping clause to carry estates in the lands, as well as the lands themselves.

An annuity is given to Olivia, payable out of the said lands devised: And there are powers given to whichever of his sons should be seised of an estate or life for life in the said lands, to commit waste, fettle jointures, and make leases; which powers (as I before observed) are applicable to possessions only.

But these minute and critical observations serve only to weaken the argument: Since there are, in this will, sufficient general words, which expressly and clearly show that the testator had not intention to include the reversion of the settled estate in his will, as much as if he had used particular words and expressions to declare it directly and explicitly.

In the case of Coryton v. Helier, the testator omitted to add the words "if he shall live long," to the estate whereof the devise was for 99 years: And yet the Lord Hardwicke construed it, that it must mean not an absolute term of 99 years, but an estate for 99 years qualified by that restriction, "if he should live long," because it so appeared upon the face of the will consider'd in all its parts and taken all together.

Mr. Justice Denison, having been absent during the argument, declined giving any opinion; but seemed satisfied with what Lord Mansfield had said.

Mr. Justice Fferrer said he had made some observations upon the will; but Lord Mansfield had gone through it so fully, that he needed only to declare his intimate concurrence in the same opinion.

Mr. Justice Wilmot also entirely concurred; and wondered how any one could entertain any doubt about it, it being as clear, he said, upon the whole tenor and complexion of the will, as the strongest expecting negative clause could have made it. Per cur. Judgment reversed.

A writ of error was brought in the house of Lords: And their Lordships confined the counsel, to speak to the construction of the will, first. After hearing that question argued, their Lordships asked the opinion of the Judges; who were all unanimous as to That the reversion was not intended to pass. And therefore, their Lord-
daughters (by her said husband) then living, viz., Elizabeth and Anne.

Anna Corby, the testatrix'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 her said mother and also the testator, Martin Long.

The question submitted to the court is: Whether the death of Anna Corby (the mother) in the lifetime of the testator, the devisee, as to her own part, was void or legal? Or whether the said four fourth part devised as above, or any, or what part thereof, on the testator's death, will be held the liberality of the plaintiff, as heir, to law on the testator.

Lord Mansfield — The words are, "To my niece A. C. and to the heirs of her body lawfully begotten, or to be begotten, as well female 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 designation of children: For that such was the intention of the testator, there can be little doubt.

It is to be lamented, that questions of this kind have occasioned so 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 heir, or the 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 described from every course of descendents; as her, at law, heir in Borough Elphin, heir or heir male of the body.

By an ancient maxim of law, atho' the estate be limited to the ancestor, expressly "for life, and after his death to his heirs, (general or special,) the heir shall take by defeant, and the fee tail vel in the ancestor.

This maxim was originally introduced in favour of the Lord, to prevent his being deprived of the fruits of the tenure; and likewise for the sake of specialty-creditors.

The ancestor, who had the limitation been continued a contingent 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-creditors, their debts. Therefore the law said, Be the intent declared, as to the estate, where an estate is given to the ancestor, and his heirs, the fee tail vel 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 estate. Yet, having become a rule of policy, it is adhered to in all cases literally within it, although the reason 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 reason of the rule has ceased.

In the case of King v. Redding (1 Trott. 231.) A wife gave her husband all her land, and said, "I hold, where a man devised "to his issue for life, et non alteris; 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 alteris." Yet the "et non alteris" was implied, if it had not been expressed; but it flowed the clear intention of the testator; and the construction was made so as to effectuate that intention.

And in a later case of Backhouse v. Wells, M. and H. 12 Ann. where the devise was "to L.B. for his life only, without imprisonment of waftes; and from and after his death, then to the issue male of his body lawfully to be borne by the said L.B., and to partition the remaining males of the body of that issue;" the whole court were of opinion, that the devise 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 showed the intention of the testator; and thereby took the case out 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 advisable 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 be, that the land will be taken together, to be manifeftly otherwise; it shall, in such case, be construed an estate-tail; as in the case of Robins v. Robins, M. 1756, 30 Geo. 2. B. R.

In the case of Life v. Gray, (Sir Tho. Jans. 114. 2 Lev. 223. Pech. 582. Ryn. 278, 32-315.) which was a vast dispute, the heirs male of the body, which were, by the necessary construction, witten from the context, turned into words of purchase.

In the case of Alleged v. Withers, (in Ch. 4 July 1753,) where one Isaac Alleged had by deed conveyed his freehold land to his issue and their heirs, and his issue's successors and their executors, upon trust that they should apply the rents and the benefit of redivision, to the plaintiff Hannah Withers for life; and after her death to the heirs of the body of the said Hannah Withers, and Isaac Alleged (since deceased) and of Hannah Giffy and Mary Alleged, their heirs, executors and assignors, during the continuance of the estate in the premises; the question was, Whether Hannah Withers took for life, or in tail? And Lord Talbot 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 ransacked 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 trufl and a legal estate; and that even in Chancery, there was a distinction upon this point, of 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 the parties; 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 sense of the disliinction, 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 maxims 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 testator, which is contrary to the positive rules of law; or to make a chattel devisable to heirs, or land to executors.

On the other hand, if the intention be not contrary 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 devise devolved to A. expressly "for life," left room to doubt of the meaning of the rule of law, and the heir of the body should take by defeant, and not by purchase; and he thought, the rule bound a trust, as well as a legal estate. Gariab against Baldwin, in Ch. 13. July 1733.

Where
Where there are circumstances which take a case out of the rule, the exception holds upon a legal estate, as much as upon a tont.

The case of Lyle v. Gray was a legal estate, upon a deed; and the judgment was affirmed, (by mistake, it is said in Sir Thomas Fortes') to have been reversed: Sir Joseph Smyth's decree in Pizzan and Vance, was upon a lease 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 1677.

Some of the other cases I have mentioned, were likewise in legal estates.

It is true, Lord Hardwicke, in Bagshaw and Spencer, laid hold of this distinction, to avoid expressly overruling the certificate in Caniff and Caniff. But he certainly did not agree in opinion with that certificate. In speaking of it, when he delivered his judgment in Bagshaw and Spencer, he expressed himself thus—"If that case be law," and one of the last things he did in the court of Chantery was, to lend a like case to this court for their opinion; and he told me "he did it, to have Caniff and Caniff reconsidered."

It appears therefore from all that I have been saying, that there is no such fixed invariable rule as has been supposed, "That words of limitation shall never in any case be construed as words of purchase." And the present case 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 d'infent clauses in his will according to the 4 d'infent rocks.

It is agreed, that where words of limitation are granted upon the word "heir" in the singular number, such heir shall take by purchase. This is settled in Archer's case, (1 Co. Rep. 66,) and was admitted in the case of Dubber, on the demesne of Tralpge v. Tralpge, P. 9 G. 2. B. R. (that the case was distinguished from Archer's case, in having for words of limitation 'superadded to the words "all right heir male.""
The distinction is, that where it appears to be the intention of the testator, that there should be a feuence in tail, it would totally defeat that intention, if all were to vest in the first son. But where it does not appear that the testator intended a feuence in tail, there indeed the using the word "heir" in the singular number, may be a circumstance of greater weight.

Now the term "heirs," (in the plural,) in the case of gavel-kind lands, answers to the term "heir" (in the singular) in the common case 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 reasonings that are applicable to the word "heir" (in the singular,) in the common case of lands not being gavel-kind, hold with equal strength 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 course of deficient 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 much prior to males. Therefore he cannot take 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 deficient, by giving it to females as well as males. It cannot descend to females as well as males, by the rules of gavel-kind. And yet he seems to lay the same stress upon the word "female." He adds likewise, and to their heirs and assigns for ever, to be divided equally somewhere and somewhere alike;" may be yet further "—As tenants in common, and not as joint tenants." But this could not be, if they were to take in the course of gavel-kind deficient; for in such case, they must take as co-owners.

The testator's disposition of one of the proportions of his estate throws his intention to the left: I mean the devise of the one fourth to the widow of his deceased nephew Edward Read, and to the heirs of her body, Co. which can receive no other construction, but that these heirs of the body must take as purchasers. For the devise of this one fourth is not the very same words in this devise as in the left: But he could not mean that his nephew's widow should take an estate sole in that whole one fourth, or a joint-fe in her children in any part of it. Therefore the necessary construction of that devise is a strong argument of his intention and meaning as to the left.

As to Anne Cornish's taking a fee jointly with her two daughters, in thirds, as tenants in common; there can be no ground for such a construction. For it is clearly the testator's intention, that the heirs of Anne Cornish's body should not take till after her death: And the devise to her has no words of limitation added to it, it is only of her estate during her life; and not that she would have taken, if she had survived the testator, would have had an estate for life. Upon the whole, as no man can doubt of this testator's intention; and as this is the only method of effectuating it; and as there is no rule of law that prevents the taking as purchasers, when the intention of the testator requires that they should do so; I am of opinion that judgment ought to be given for the defendant.

Mr. Justice Denman concurred with his Lordship in opinion. "That courts of law (as well as courts of equity) will always continue with agreeable to the intention of the parties, if such intention be not contrary to, and inconsistent with the rules of law." And he thought, that the intention of the testator, in the present case, must have been, "That the heirs of the body of his niece Anne Cornish should take as purchasers;" making the like observations as his Lordship had done, upon the lands being gavel-kind, and their being devised to heirs female as well as male.

And he held, that it is not disagreeable to, or inconsistent with the rules of law, that "heirs of the body, in some cases, be construed as 'dejignata persona;' (a position, not to be dilated, at this time, after many concurrerent resolutions.) And this case now before the court is one of the cases where they must be so construed. 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 Piover was absent.

Mr. Justice Wilton premised, that the court were obliged to the gentlemen who had argued this case at the bar, for declining to go into that long firing of cases usually cited upon this subject. For the principle that must govern all cases of this kind, is the intention of the testator, provided it be not inconsistent with the rules of law. And all cases which depend upon the intention of the testator (which is the pole-star for the direction of devies) are best determined upon comparing all the parts of the devise itself, without looking into a multitude of other cases: For each fland pretty much upon its own circumstances; and one is no rule for another, or very seldom at least.

Here the testator intended, beyond all doubt, that the children of his nephews and nieces should take the inheritance in fee-simple, both males and females, per Capitae, as tenants in common. And this is a legal intention.

But this intention cannot take effect by giving an estate in tail or in fee to the first taker: for the intention of the testator must be subservient to the law; and not the law to the intention of the testator. Now a taker, be
be his intention what it will, cannot make an estate de
defended to males and females all together, nor gavelkind lands to defend to them as tenants in common. The
teatlors' intention cannot, therefore, take place by giv
ing Anne Corns as an estate tail.

What is to be done? Why (as my Lord
Coke says) you are to mould the barbarous words and ex
pressions of the teatlor, so as to execute his intentions
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 present cafe, comes to
this: "Whether it be absolutely necessary, that the
words heirs, or heirs male, or heirs of the body, must be
in, all cafes, and under all circumstances, words of
limitation."

Now it is certain, that in some cafes and under some
circumstances, they may be construed words of purport;
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. Smith, which was likewise upon a deed:
Edward Egerton conveyed lands by fine, to the use of
himself for life, remainder to his first son and the heirs
male of his body, life-time, remainder to his second
son; remainder to the right heir male of the said Edward
Egerton to be begotten after the said sixth fon, and of
his heirs male. This was a not a contingent estate, and
not an estate tail in Edward Egerton; because it was
limited to particular persons." They are not to be con
strued in this manner; but the intention of the testator or
of the parties is declared to be, or clearly appears to be,
"that they shall not be so construed."

Now it is plain, in the present cafe, that the teatlator
did not mean to use the words "heirs of the body," as
words of limitation: It is as clear as if he had expressly
said: "I do not intend the words in that sense."

And as to Anne Corns's taking an equal share in fee
simple, in common with her daughters.—That construc
tion can never hold: For it is most certain, that the
teatlor did not intend the di
e
tion into equal shares to be
made until after Anne Corns's death.

This same construction is further confirmed by the
clauses which devise one fourth to his niece in law Grace
Red, the widow of his deceased nephew, and to the
heirs of her body, in the same form of expression. 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 lease-hold and inheritance with his natural
relations. Per Cur. Unanimously, judgment for the
defendant.

The following is Lord Hardwicke's argument in the fa
mous cafe of Bagshaw and Spencer, as often mentioned in
the two preceding cafes.

Catherine Bagshaw by bill of Revivor, - - - - - -
Plaintiff,
William Spencer, Coventh Neville, Eqq,
William Hirlington, Thomas Chalrlesworth,
Rachel Fitzbeckett, John Spencer, and
Benjamin and William Spencer, infant
sons of William Spencer, - - - - - - - -

Benjamin Afton by will dated the 7th of Sept.
1725, devised all his mansons and lands to Edward Deton, Ed
ward Deton the son, William Spencer, Baptifl Pratt
and Robert Charlesworth, their heirs and assignes; in
trust, that they and their heirs should, in the first place, levy
and raise by, with and out of the said premisses by the
rents, issues and profits, or if sale or by mortgage there
of, or so much thereof as should be necessary for the pay
ment of his just debts and funeral expenses, and pay the
fame and interest to the time of payment. And after payment thereof, then he gave and devised the said pre
misses.

Edward Deton, Edward Deton the son and
Robert Charlesworth, and the survivors of them and
the executors and administrators of such survivor for the
term of 500 years, without impeachment of waffe, on trust
as after mentioned; and then the will goes on in these
words: "And from and after the determination of the
said estate for years, then I give and devise all my said
manors, lands and hereditaments unto the said Ed
ward Deton, Edward Deton the fon, William Spencer,
Baptifl Pratt and Robert Charlesworth, their heirs
"and assigns and for ever. If no such person or persons as
shall be and stand feated of the said premisses in trust
to the several uses, behooves, intents and purposes after
declared, (That is to say)

"As for and concerning one moiety or half part of said
manors and land, I give and devife the fame to the use
of" and to my nephew Thomas Bexem of fon, and the
heir of my sister Alice Maria deceased, for and during
the term of his natural life without impeachment of
waffe; and from and after the determination of that
estate, to the said Edward Deton, Edward Deton, the son, William Spencer, Baptifl Pratt, and Robert
Charlesworth and their heirs, for and during the term
of the said Thomas Bagshaw; to the intent and purpose
therein; and to the extent and purposes;" to preserve and support the contingent uses and remain
ners herein after limited; but to permit the said Thom
as Bagshaw to receive the rents and profits for his
"own and assigns; and after his decease, then to the use and
behalf of the heirs of the body of the said Thomas, the
nephew lawfully begotten, and for want of such issue,
to my nephew Benjamin Bagshaw or and during the
term of his natural life without impeachment of waffe; and
from and after the determination of that estate; I give
and devise the same unto the said Edward Deton,
Edward Deton the son, William Spencer, Baptifl Pratt
and Robert Charlesworth and their heirs, for and
during the term of the life of the said Benjamin Bagshaw; to the intent and purpose to preserve and support the contigu
ous uses and remainders herein after limited; but to permit and suffer the said Benjamin Bagshaw to receive the rents
and profits for his own and assigns; and after his decease, then to the use and behalf of the heirs of the body of the said
Benjamin, lawfully begotten, and in default of such issue,
"&c. &c. &c."

Then follow the like devises to Charles and Robert
Bagshaw for life successively, with remainder to trustees
and then to the heirs of their bodies, with the revексion in fee to the teator's right heirs.

And as for and concerning the other moiety of his said lands and manors, he gave and devifed the same to the use and behalf of his fillet Christiana Spencer, wife to the said Edward Deton, for and during her life, without impeachment of waife, with like remainder to trustees to preserve the contingent uses and remainders therein after limited; and from and after his decease, then to the use and behalf of the heirs of the body of the said Christiana Bagshaw, and in default of such issue, then to her own right heirs.

The teator declares the trust of the before-mentioned
term of 300 years, to be for the raising and payment of 2000, for Annuity of Christiana Spencer for life for her separate use, and like remainder to all his other heirs and legacies after bequeathed, and then he bequeathes several pecuniary legacies to his nieces and trustees, as well as to some other persons.

3 And
And that he gives and bequeaths all his goods, chattels, and personal estate to be and come in aid of his real estate, and to be his executors applied, in the first place towards paying his debts, funeral expenses, and legacies, as the law directs.

After the death of the testator, Thomas Bagshaw the first devise of the moiety in question died without issue in January 1729. And thereupon Benjamin Bagshaw, the second devisee, brought his bill against the trustees to have a performance of the trull of the will; that the personal estate must be divided as far as was practicable in coinvention 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 effect of the last testator's real estate, and, together with the rents and profits received, be sufficient to pay his debts and legacies, and the arrears of the moiety, in the whole of the said trust estate, so that the same could be paid for the advantage of the personal estate, thereupon, should be sold, and the debts, legacies and arrears of the estate annuity be paid out of the moiety arising by such sale; And in case no more of the same estate should be sold, than would raise the same, then a commutation of partition was directed to issue to divide the remainder of the said trust estate into moieties.

In the short term 1732 (the same term with this decree) Benjamin Bagshaw fulfilled a common recovery of his moiety of the estate.

May 26th 1737, the master 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 incumbences mentioned. This report was confirmed by the court.

5th Jan. 1737, Benjamin Bagshaw made his will and devised the moiety to his wife Catherine Bagshaw in fee, and made her executrix. 1748, 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 entitled unto.

27th June 1753, 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 Allen, and decreed, that the moiety in question, or such part thereof as should be necessary, be sold according to the former decree; and that the money arising thereof, after paying the purchase-money may 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 Allen, the first testator. Now it is evident, that the action of Wills, that has happened subsequently can materially vary that is, but the right of the parties must be taken as it stood at his death.

Therefore, it is nothing that has been done by the first decree, and the master's report directed the estate to be sold, as suit convenient and beneficial for the parties, must be considered. But although it may happen, that a surplus of the money may come to be laid out in a new purchase of lands, the contrary must be equally the same, and these new purchased lands be settled to the very same uses, as if the re-
First, it seems to be too remote, being after the testator's debts rightfully should be paid, which may in point of time exceed the compass of a life or lives in being.

Secondly, the recovery suffered by him was before the debts were paid, and consequently before the continuance happened, whilst it is breach and the fee-simple determined, and the testator's goods and chattels; and consequently he could not make a good tenant to the property 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 declaration paying by his recovery and will, and interdict the eat 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 reversion in fee held after law remain unbarred, and vest in the defendant John Spencer who is now heir at law to the testator Benjamin Afhion.

This makes it necessary for the plaintiff to admit, that all the devises subtenant to the first limitation to the trustees, and then to the individual devisee, to be void, and this brings me to the second and main question, viz. 2dly, Whether the devise to Benjamin Bagshaw in this moiety of the trufell estate be an equitable estate-tail, or an equitable estate for his life only, with contingent remaindere to the issue of his body successively.

2dly. The next thing plainly implied in this clause, that there were contingent uies or remainders 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 uies or remainders, unless to the heirs of the body.

And I am of opinion that they are; for if the tenant has thereby declared, that his meaning was to give them such an estate for life as would have been subject to waste, if he had not expressly excepted it, and as might, according to the rules of law, be forfeited, and as was to be followed by contingent remainder, and not by limitations to the issue to remain in remainder in fee tail to the heirs of the body. The counsel for the plaintiff insisted, that the devise was under great difficulty to frame any plausible argument to shew a shadow of intention in favour of the construction; and the only thing they relied upon was, That the tenant had flown in his will that he underfoold the difference between words of limitation and words of complete proper to create a contingent remainder; and therefore in devising the other moiety, to the heirs of his issue, and the other moiety to his issuing descendants; from his issue M. Bagshaw, who was dead, and the other moiety to his issue, devised to his issue M. Bagshaw, who was dead.

The first question is, what appears to have been the true intention of the tenant in this devise?

This I take to be extremely clear; nobody who reads the will in minute can doubt one moment, whether he actually intended to make a final settlement of his estate among all his nephews, the sons of his two fillers.

For this purpose (among others) he first vests the whole fee of the entire estate in trustees; and after having directed the particular trusts, he divides it into moieties, giving one moiety to his nephew, descended from his first Mrs. Bagshaw, who was dead; and the other moiety to his issue, descended from his first 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 pen'd this devise to his issue 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 limitation; and his devise. Mr. Bagshaw, though it has been otherwise held 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 estate as would have been punishable for waste, and thus excepted from it.

Then he devises to four of his trustees to preserve contingent remainders in their words: 2dly. And from and

"after the determination of that estate, I give and bequeath to the said Benjamin Bagshaw, to dispose of the said estate in such manner and for such purposes as he shall think fit, and remainders to be held, but not to be made tenants for life only, with contingent remainders to their issue.

This has been the make the Cards of the case on the side of the defendants; and it speaks plainly several things.

1st, That the tenant intended to give to his several nephews, particularly to Benjamin Bagshaw, whose recovery is now in question, such an estate only as might be forfeited.

2dly. The next thing plainly implied in this clause, that there were contingent uies or remainders to be preferred.
of waft; and has interpolated no clause to preferre contingent remainders between the devise to those after-born, and the limitations to the heirs of the body, than which nothing can be stronger to demonstrate, that in the use of land, it was meant to give a more efficac life, and to use the words heirs of the body as words of purchase, descriptive of the sons and daughters, and in the other clause to give an estate of inheritance, and to use the words heirs of the body as words of limitation; because the law would not suffer him to make a devise after a contingency, and to carry on contingent uses further.

2dly. The next question is, admitting this to have been the testator's intention, whether that intention is consistent with, and can take effect according to, the general rule of law or equity. As the law, so far as it respects 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 so, the law will perforce his intention, and reduce his gift to such an operation as will allow, that the law has established a clear rules over every revolution of Shelley's estate, 1 Co. 104:4; 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 not words of devise, and the law will not suffer him to do this.

To go by the letter. 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 supersede his intention; but I apprehend it is misplaced in the present case. The true application of this principle is: when 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 say 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 sense; but even then the construction has been unfailingly, 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 make a perpetuity by a will any more than by a deed; nor to put the freehold of lands in abeyance, so as there shall be no person to perform the services or to make defence in a principle, which is an absolute fee simple, not to make a charitable depended to be generally considered. Consider what is the result of this: It is because this would be to change the law, and by the acts of private persons to vary the rule of property, which that hath inflicted. This therefore arises for want of power, and not for want of a legal principle, to what to be done by any words whatsoever. But in the case in question, here is no want of power; for there can be no doubt but the testator might devise his lands for such estates for life, and with such contingent remainsders as are contended for by the defendants. The only objection is, that he has used improper words, which the law will not allow for that operation. The question has been mentioned in the plainest, but is not so 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 inns capable, and therefore, if his intention appears plain to be lawful, although he uses barbarous or unapt words in his will, the law will construe those barbarous or unapt words into words proper and sufficient in law, according to that intention which appears in his will. This is laid down in Bonallack's case, 3 Gr. 20, and Mot. Manning's case, 3 Gr. 95, and has been adhered to ever since.

If the objection is here? Is it any more than that the testator has used words unapt and improper to create contingent remainders; but does not the fundamental rule of construction say, that if the intention appears, the law will extend and mould those unapt and improper words in such a force as will leave his intention clear, which cannot be done here without confounding 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 resolucional to the line 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 Rigden's case in Plaunt's, and Shelley's case, and cannot be words of purchase. This is the ground. Try it and see whether it will hold. It is for the harmony of the law there are no persons to execute the devise where, which the words, heirs of the body as well as issue have been held to be words of purchase. Archer's case, 1 Co. C. 6. The words indeed there were next heir male in the singular number yet that was not the reason of the determination, but because words of limitation were added after them; but those words have been the demonstration of the testator's intent in using the first words.

Clarke and Day, Mar. 592. The testator devised his lands to Rea 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 shall have the lands, and to the heirs of their bodies begotten, remainder over to a stranger. It was adjudged, that the daughter had not an estate-tail, but only for her life. So is the case of Lord Hale in King and Martin, and the case of James and Richardson, 1 Vent. 334, and Poller, 457, and 2 Vent. 311, by the name of Burdett and Durant. This was another decision, in a case very similar, adjudged in the Hous of Lords in May 1714. I choose only to refer to these well known cases. But upon this point, a stronger authority than all these is the case of Life and Grey, in Sir Thomas Jones 114. Poller, 502, and Sir Thomas Raymond 315.—In ejcement a special verdict was found, that John Life by indubitable conveyance and fiat feal ed of lands to the use of himself for life, remainder to his son Edward for life, remainder to the first son of Edward in tail, with like remainder to his second, third and fourth sons, and so severally and respectively to each of the heirs male of the body of Edward, and the heirs males of their bodies, and so to his son and the heirs male of his body as a common recovery, under which the defendant claimed, and William Life was lefleor of the plaintiff. The question was, whether Edward had an estate-tail executed in him before the birth of any boy? 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 sons, because limited to the heirs male of their bodies; and it was intended that each of the sons should take in the same manner; for that the words to each of the heirs male of the body of Edward, intend each other of the sons, and the rather because there is a limitation over to the heirs male of their bodies, which was an apt mode of conveying the lands, and the words were taken from the express words. And the judgment was given for the plaintiff. It is said 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 same case is reported in 2 Lev. 223:1 and there it is said to have been held, that Edward took only an estate for life, and the word of signifies rede mim us: so that Edward has but an estate for life from the manifest intent of the conveyance, which ought if possible to be supported, and judgment was given for the plaintiff. Sir T. Jones says, this judgment was revested in the Exchequer chamber; but that appears alo be a mistake, for the record has been found, and it is entered Trin. 20 Car. 2, Rot. 141, B. R. and there it appears this judgment was affirmed.

This was adjudged even upon a limitation in a deed, where the same latitude of construction is by no means to be allowed as upon a will; and therefore it is a strong authority that the law has not judicially plaid down, the body to be absolute words of limitation, but they may be taken as words of purchase.

To this it had been said, that in Life and Grey there were several words; the 118, 121, 30, and 4th sons mentioned in the fifth place, and afterwards and so forth, and respectively to and from their heirs male of the body, Edward the son, and the heirs male of th' body; that
It must be admitted that this resolution is a clear auth-
orthy, that upon the will of the party. In question the inher-
ating a limitation to trustees to prefer equitable title was
not sufficient to change the sense of the words heirs
of the body into words of purchase, and to make the issue
be taken by way of remainder even tho' there were no other
contingent remainders in that will. No body can have
a greater right than the judges who made that certificate, than I have; but it differs from the present case. If there
were in that will no clause without impeachment of wits, but perhaps that may be thought not to defer much weight.

2dly, It was a devise of a legal estate, and not a de-
vice to a trust for life; and in the first case must be taken as they float, and the judges were bound to
understand them according to their legal operations.

No conveyance was to be made; nor any subsequent 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 (prerogative taken would operate. But in the case now in judgment
the limitations relative to the present question are of a
trust; the constitution and direction whereof is the
proper subject of this discussion of this court; which
the court is bound to execute according to the intelli-
gence, which has been determined by his honour the
Master of the Rolls, and in that I agree with him. The
conclusion arising from hence is, that a great latitude
is to be allowed in the construction of the words in order
to comply with the intention, since they are to be mo-
delled and reduced into a conveyance by the act of this
court.

3dly, The liberal observation I shall make upon this
case is, that the opinion of the Judges furnishes a
new light in the present case, which did not appear at
the time of the late decree made by the Master of the
Rolls; for the Judges say, that the interpreting the re-
mainders, which are the words in the bequest, to be
between the estate to Robert Coulfon for life and the
limitation to the heirs of his body, prevents the estate for
life being united with and merged in the inheritance;
and that he took a direct estate for life with remainders 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 construction of the limitation,
the great difference between the two cases is, that in
Coulfon and Coulson, the devise was (as I observed) of a
mere life, and no more, in the nature of it to be a
trust in equity. The answer relied upon to this dis-
tinction has been, that limitations of truths, 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 concessions in the
Duke of Norfolk’s case in 2 Chas. Cases were cited. All
these concessions I shall allow and adhere to in a
found fence, and I agree that one rule of property is not
prevail at law; and another to be set up in Chancery. But
let me now propose this question to my Lord Nottingham:
He no where says the construction of the words
must in both cases be exactly the same, or that a
court 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
cestate of a term, all depend on the same reason;" and
after words, “It is agreed all along, that the measure
of the limitation of the trust of a term, and the measure 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. There is no” Co-tenant of life, there is
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 I applied to?
The principle 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, where he says: "They may before the Court is agreed, that the limitation of the remainder of the term for years, in that case, after an estate 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; for the meaning of the limitation, to which they may be carried do effectually concern the rules of property, and how near we may approach to a perpetuity, which was the great concern in the Duke of Norfolk's case. But the more or less liberal construction of the words, to comply with the intent, does not concern the intent, and affects not the rules, if the court is to find out that construction which the tattler, delivered from the technical use of the words; and in conformity there- where directs the conveyance within the rules of law allowed to such limitations. My Lord Nottingham's doctrine is complied with, and the mischief which he condemns, is avoided. Upon this reason most reiterations of this court have been founded, which were cited at the bar. I shall begin with the case of Papillon and Poyre; because it establishes a distinction between a legal estate and a tenant in the same case, and upon the same will.

Samuel Papillon died 1602, 11. to the tattlers, to be laid out in lands, and to be settled upon his heir John Papillon, without the performance of wafle, and from and after the determination of that estate to trustees and their heirs during the life of John Papillon, to prefer the contingent remainder, 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 tattler devised the manor of Great Bentley in Essex, and certain lands in possession to John for his life, without imprisonment of wafle, and from and after the determination of that estate to trustees and their heirs during the life of John, to prefer contingent remainder, remainder 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 passed 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 the trustee, according to the intent of the tattler, during his life.

Afterward the caufe coming upon an appeal before the Lord Chancellor King, his Lordship reversed so much of the devise as related to the deeds and writings of the manor of Great Bentley, and the lands devised in possession, and ordered them to be delivered to the plaintiff John Papillon, but with contingent remainders of the inheritance to his sons and daughters, and this founded principally on the caufe appointing trustees to prefer contingent remainders; that as to the trust estate, to be purchased and settled, this court would not be misled by the technical force of the words heirs of the body, and to direct the settlement to be made accordingly.

Secondly, That Sir John Jekyll, who took much time to consider of the caufe, and made his decree on great deliberation, was of the same opinion as the legal estate devised 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 the Master of the Rolls, and therefore he declared his opinion, that as to the legal estate devised in the manor of Great Bentley, it was at law an estate-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 to go further into this extraordinary case beyond the father's marriage articles, whereupon the supplemental bill was brought after the first decree, were admitted and read in the caufe, and by them he was clearly intimated in equity to an estate-tail in Great Bentley, so that it was not in the tattler's power to deflect, and his will did not operate.

However, I admit he declared that opinion; but upon this part of the caufe 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 caufe 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 the case till Monday. On Monday he said he had looked into the cause of Esfe and Gray, and that it was indeed a very strong case. And he seemed to be clear in his opinion, as to the law of the supplemental bill, that it was not dated on 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 revealed that part of the decree to John 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 it appears by the registrar'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 caufe of Conslow and Conslow I will urge the caufe of Papillon and Poyre 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 by penning ought to receive this construction, and the court to direct a conveyance accordingly. And in this the court was clearly warranted by former prece- dents. 

The Counts of Sheepsh (int. al.) devised her real and personal estate to Sir Charles Cotterell and others, and their heirs for payment of debts and legacies, and after their decease that part of the estate should be partitioned between her heir for Henry and the heirs of the body, by a second wife, and in default of such issue to her Francis and the heirs of his body, with remainders over; taking special care in such settlement, that it never be in the power of either of my sons Francis or Henry to dock the title of either of the said estates given them as aforesaid, during their or either of their life or lives. And Whether Francis and Henry were intitled to have an estate-tail conveyed to them, or only an estate for life, was the question; the defendant the Lord Suffolk having purchased from Henry and his younger brother who was the plaintiff's father. Upon the hearing of the caufe, my Lord Chief Justice declared, that the sons must be made only tenants for life, and Should not have an estate-tail conveyed to them, but their estate for life should be without imprisonment of wafle, because here an estate is not executory but only executory, and therefore the intent and meaning of the settlement is to be purposed; She has decreed the supplemental bill, and her force in their power to bar their children; which they would have if an estate tail was to be conveyed to them; but had she by her will devised to sons an estate tail, the law must have taken place, and they barred their issue, notwithstanding her subsequent clause or declaration in the will, that they should not have power to dock the interest.
Upon this case I will only make this observation agreeably to my Lord Cokeop'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 remainder men, and I will therefore proceed to shew why the devise in the will now in question to trustees to preserve contingent remainders will not have the same operation.

Another great authority to this purpose, is, the case of Sir J. Hobart and the Earl of Stamford, decreed also by my Lord Cokeop, 14th December, 1709, and affirmed in the House of Lords. The question in this case must depend upon what light I flately this case particularly, because I have seldom found it correctly stated, or the determination explained in its plain force.

Mr. Serjeant Maynard by his will devièd his estate to trustees and their heirs, to the use of him 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 Eliz, 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 Eliz. for 99 years, if he shall so long live, remainder to the heirs united of the body of the first son; remainder to all and every the sons of Eliz. 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 other sons, and all and every her fons for such like term of 99 years, with remainders to the heirs male of the body of every such fons.

He further willed, that the other part of his estate should by advice of counsel be conveyed to, or to the use of Mary Maynard for life, without impeachment of wafle, and after, remainder to all and every her son and fons for 99 years, (if fuch son or fons shall so long live) with several remainders to the heirs male of the body of every such fon; they and all the heirs male of their bodies to take successively; each son to have the fad term, with all the fons to his said heirs to his body; after the determination of the said estates and failure of such heirs male of their respective bodies, the remainder thereof to his other grand-daughter, Lady Hobart and her fons, with the like terms and remainders; the remainder of all the estate to trustees and their heirs, during the lives of her said Lady Hobart and her survivor, and to the right heirs of Sir John Maynard, which last heirs were the Counts of Stamford and Sir John Hobart.

This is the order which was affirmed by the House of Lords upon the appeal.

It seems but worthwhile to fludie little to shewere upon this case. First, by way of observation, and the House of Lords confirmed the words Heirs male of the body of the first fons of my Lady Hobart in the sense of the first and every other fon of such first fons.

2dly. Taking the limitation as it ftood in the will, and reducing the words, or even the frit legal operation of the words, as the court conceived them, and the estates of Hobart, if he should so long live, (in cafe they should survive their wives), in the respective parts of the estate.

Sir Hen. Hobart and his lady died, and left Sir John Hobart (now Earl of Buckingham) their only fon, an infant, who brought his bill to have a conveyance executed by the trustees pursuant to the will and act of parliament, 34 Jan. 1707. Lord Cokeop decreed, that the trusts executory should execute conveyances according to the will and words of the act of parliament, and referred it to a Master to settle the conveyances. The Master made his report whereby he allowed the draught of a conveyance in general words, referring to the will and act of parliament, thus: To convey the premises to Sir J. Clasyn and Mr. Carter and their heirs, buckahnon, to Vol. II. No. 82.
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 to the after-born heirs of Mrs. Spencer, and yet it did not prevail against the testator's governing intention to make a strict settlement. These cafs were precedent to that of Papillon & Fryar, but that authority has been followed by others since.

Afron and Afterman November 1734, before Sir T. Jekyll, and R. T. Afron by his will gave 3,000 l. in moveable and 6,000 l. 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 Geo. Jas. Afron for life, and after his death to the issue of his body lawfully begotten, and to want of such issue, to his nephew Henry Afron in fee. Geo. Jas. Afron brought his bill for a performance of this trust; at the hearing of the cause one question was, what effect the plaintiff ought to take in the lands to be purchased, whether for life only or in tail; for it was insisted on his part, that it had been a devise of the lands to be purchased by the testator, and the trust ought to receive the same consideration.

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 contingent remaindermen, with remainder to his nephew Henry Afron in fee; a devise of the other moiety to be made to the plaintiff.

The decree has stood without being appealed from; but here I must take notice, that the words of limitation are ifuses of his body, and not heirs of his body, as in the present case. It has been established ever since the case of King and Melling, that in all the words ifuses of the body are as strict proper words of limitation, as heirs of the body, and equally give an estate-tail in lands legally devised, and so it undoubtedly would have been the case of Afron and Afron, if it had been a devise of the lands: What changed that construction in the case of Backhouse and Wells was the word only, which imposed a negative.

The next case I shall mention is that of Withers and Allgood, decreed by Lord Tulloch, 4 July 1735. I shall take it from the Register's book, and it is this: Izaac Allgood, being seized of certain premises in a fee for life for years in houfe, by deed dated 19th February 1714, conveyed the same to trustees, to hold such part of the premises as was freehold to the use of the trustees and their heirs, 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 income of redemption thereof to the use of Hannah Withers, for life, and after her death to the heirs of the body of the plaintiff Hannah Withers, and of Izaac Allgood, since deceased, and of Hannah Glaphy and Mary Allgood and to their heirs, executors, administrators and assigns, during the continuance of the estate in the premises.

After the testator'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 effect the plaintiff Hannah had in her title? the nature of the words, whether for life or in tail; and upon argument my Lord Tulloch 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 entitled to the equity of redemption of the freehold and held premises comprized in the devise of the estate for life, and after her death to the heirs of her body, as tenant for life, with proper provis for securing the principal money upon the remainder in the estate, and for keeping down the interest during her life, out of the rents and profits of the same.

You are aware 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 distinguished by saying, that here the heirs of the body of Hannah Withers were joined in the devise with other persons who clearly must take by purchase by way of remainder, and that the word "heirs" was used constructively, 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 will change those words from 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 to be conclusive, it must first be proved that the testator had a late necessity to make them words of purchase; since, if it had been a grant of a legal estate, Hannah Withers 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 Tulloch said expressly, that the rule of law is not so far flexible 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 Glamisley and Befiffe, which was decreed by Lord Talbot in 1733.

Sir Thomas Perfball by will devised this estate to trustees for the use of his wife Hannah, and all his grand-daughter Arabella Perfball should marry or die, to receive the rents and profits, and to pay her 10 l. 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, that if 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 waste in houfe excepted; remainder after her death to her husband for life; remainder to the issue of her body, with remainder over; and upon further trust, that if the Arabella died unmarried, then to the use of the said Arabella for life, remainder to the son of his other grand-daughter Frances Ireland, and the heirs of her body, with several remainder; and upon further trust, that if Arabella should marry not according to the directions of his will, such marriage to be void, and the estate to be trust to trustees, as to one moiety thereof, to the use of Arabella for life, remainder to trustees to prefer contingent remainders, remainder to her first and every other son being a protestant in tail, with several remainders over; and the other moiety to the son of his grand-daughter Ireland in like manner.

The teflato died, and Arabella now Lady Glamisley attained her full age. Upon a treaty of marriage with Lord Glamisley, 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 defense was, that one of the trustees, who was also remaining in the testamentary power, was not to convey. However the having by this conveyance a legal estate-tail in one moiety, and an equitable estate in the other, suffred a recovery to the use of herself in fee, and in 1730 married my Lord Glamisley, who made a considerable settlement upon her. As to her own estate, she covenanted to settle it upon her husband for life, to her own use for life, trust for the first and every other son 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 or one moiety to thetrust estate from Mr. Befiffe to the use declared in the marriage articles; and the principal question was the hearing of the case; and it is evident by viewing this will Lady Glamisley 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...
the condition herebefore mentioned, that the said is real estate for life with remainder to her husband for life, with remainder to trustees to prefer the contingent rents, with remainder to her heirs and every other person in tail, with remainders to her daughters in tail, with other remainders over: And decreed a settlement according.

Notwithstanding this, he held, that according to the law of King and Miller, the words 'issu of the body' were as properly words of limitation in the will, as the words 'heirs of the body'; and that if this had been a devise of a legal estate, Lady Glamisly would have been tenant in tail; but that it being a trust circumstantial to the estate, he was at liberty to make a different construction to comply more strictly with the testator's intention. I cite this case at present merely as another authority in general, that the word 'issu of the body, was construed as a word of purchase, to comply with the testator's intention; and I shall refer to my next head that part of my Lord Talbot's reasoning which turns upon the word 'issu of the body, as having been so much insisted on for the plaintiff.

But, before I quit this precedent, I must observe, there were four other cases of similar reasoning, one being on the act of Sir Thomas Periwall's will, to rebut the supposed intention to make Lady Glamisly only tenant for life in case she married according to the directions of this will, which she had done: for in the other event of her not marrying according to the direction of his will, he had directed one moiety of the estate to be conveyed to her for life, with remainder to trustees to prefer contingent remainders, with remainder to her first and every other son, being a Protestant in tail, whereas in the other case it was barely limited to her for life, then to her husband for life, and then to the 'issu of her body generally'.

From hence it appeared, that the maker of this will knew the difference between a general limitation in tail, and a strict settlement, and knew also how and in what place properly to infant trustees to prefer contingent remainders, when he intended it. This furnished a much stronger objection than that which is drawn in the present case from the limitation of the other moiety to the absentee sons of Mrs. Spencer; and yet it did not prevail to support the legal construction of the words against the manifest general intention of the testator.

30th. This case naturally leads me to the third and last question, 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 head I told you, I proceeded to consider the distinction between trusts executed and trusts executory.

In the plaintiff, it has been objected, that two particular settled rules stand in the way. 30th. That abov' in decreasing an execution of marriage articles, entered into for valuable considerations, the court in order to render the contract of the parties effectual, will make such a construction as is contended for by the defendants: Yet upon a will, under which all the parties claim voluntarily, the words devising a trust executory must be taken as they are, and the court is not at liberty to depart from them.

31st. That even in the case of wills there is a difference established between trusts executed and trusts executory. That for instance, Where the devise is to the use of A., and for the life of his wife, B., and his heirs or issue of his body, that is a trust executory, and the court cannot vary the words; but where the devise is to A., and his heirs, upon trust to convey the estate to B., and the heirs or issue of his body, that is a trust executory; and the court has a greater latitude to mould and frame it fo as to infroy his intention.

The leading authority to support the first objection is, that of Bale and Coleman decreed by Lord Couper 26th July 1708, and afterw ard by a rehearing by Lord Hars-
If it had stood here, this decree had been a clear authority for the defendants in this cause; but Bale and Coleman was reheard before Lord Harcourt in April 1741, who was of another opinion, and ordered, that my Lord Couper's decree, so far as it directed a conveyance of the last fourth part to the first 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 Christopher Bale; and from that use of such trust to the use of Christopher Digor 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 marriage 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 purchasers; and in a court of equity ought to have their contract executed according to the intent and the nature and course of marriage articles and settlements; on making whereof the issue male of the marriage are particularly regarded and generally taken as purchasers.

That when by the careless penning of marriage articles, the contract is express'd in consideration of an intended marriage and portion, and to settle the husband's estate to the use of the testator's and his issue male of their bodies, or the like, that general limitation has been restrained in this court (when an execution of the marriage articles and agreement has been decreed) to an estate to the husband for life, with a remainder to his children and other issue in tail male; for that it could not reasonably be supposed a valuable consideration was agree'd to be given marriage articles and settlements; that the husband should destroy or bar the settlement as soon as he should make it; that but that one case had been cited where the like decree had been made upon the words in a will, under which the devisee claims voluntarily; that in such case 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 such intent appears with certainty, and be consistent with the rules of law; but such intent could no otherwise be considered in a court of equity than in the courts of law; and that the same words of limitation in a will, ought to receive the same construction in a court of equity as they have at law; that the same words in a will, which are to be construed in this court, when they fall under a trust, and are to be carried into a further execution, as in this present cause by the words in the codicil, according to the said general limitation of marriage articles: The testator has given the plaintiff an estate-tail in the defendant Elizabeth Bale's estate after her decease, and subject to her power of leasing, given by the testator, and that in this case it could not be inferred with any certainty from the power of leasing, that no estate-tail was intended; in regard such power of leasing is more beneficial than that given to tenant in tail by fl. 32 H. 8. And it being admitted, that the debts and legacies stand, therefore, the fact of the estate-tail ought to be made as if it had been; and then in consideration of law, it will be an estate-tail executed.

Consider these reasons, and how far they are applicable to the present case. The first part of this declaration, relating to the distinction between the construction of marriage articles, and the valuation of settling wills, is correct; but has nothing to do with the present case; and it is remarkable, that the case there put, is of articles limiting the estate 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 the words of a will had been by the right of descent 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 set forth, for in the cafe put there is no intention of trufts to prefer contingent remainder, nor any thing else to indicate an intention in the testator different from the legal force of the words. The next clause in the declaration seems to be applied to decrees made in settling wills, about which there is no question but they must receive the same construction in courts of equity as in courts of law. The next words relate directly to devises of trufts, and I own they go a great way; "That the same words in a will, which at law would create a legal intail, ought to be so construed by this court, when they fall under a trust, and are to be carried into a further execution as in the present case, so as to make an equitable intail." Now here I must observe, that this proposition includes all trufts, as well as what have been called trusts executory as trusts executed. For the words are, which are to be carried into a further execution. I fear his Lordship, for whose abilities I have great deference, had not in that case been fully informed of the precedents; for almost every one of the authorities of this case which I have cited under my second head, are direct contradictions to this proposition, and having already flared them, I now only refer you to them. At the conclusion of the general argument in this declaration, there is a very remarkable clause, "And it being admitted, that the debts and legacies are paid; therefore the same construction ought to be made, as if no trust had been." His Lordship has thought fit to call in this reason in aid of his opinion; but I own I cannot conceive that this is a sufficient argument for the decree which was given in all the exposition of the will; but if it could, it distinguishes that case from the case now in judgment; for here the estate is not fold, nor the trust performed. I may be thought to fland in need of some excufe for dwelling so long upon this case; but it had been so much enforced 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 my office, I have heard him more than once express himself very strongly and very visibly against declaring general reasoning in decrees of this court, which possibly may affect other cases, not then in judgment, and which consequently could not have been fully considered nor foreseen. I could have wished that his Lordship had not departed from that cautious rule in this instance.

But to add force to this precedent, it was said at the bar, that the cause was reheard again before my Lord Couper, when he came to the great and a second time, and that the order of the Court of King's Bench, Harcourt, was reheard and affirmed the latter decree made for the reversal 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 reasonings in that decree, it must be only obiter upon the occasional mention of it in some other cause; and after all, my Lord Harcourt's reversal of Lord Couper's decree does not stand in need of that detail of general reasons to support it: It may be maintained upon the foot of particular difficulties from other precedents. I have not a doubt, that this is a just and valuable decree. 2dly, I come now to the second objection arising under this head, which is founded on the difference said to have been established between trust executory and trust executed: 4th That the court has a greater latitude of construction to answer the intent in the one than in the other.

Nobody can be more averse than I am Quicte maeere, to shake things settled; but I cannot find that this distinction has been established by any direct resolution upon the point, though mention has been made of it arguendo, and reasons have sometimes been drawn from it collaterally, to strengthen decisions in cases where a conveyance of property has been decreed to be executed by tenants life. If one was to examine this distinction to the bottom, it might perhaps found a little strange in the ears of lawyers, that such a distinction should be so freely established. All trusts are in the notion of law executory, and to be executed in this court by judicature, as the old books speak.
speak. At Common law every ufe was a trust: Then comes the fl. 27. H. 8 and executed the legal effe to the ufe, and conjoined them together. That statute makes the trust the ufe at some time or other: Sometimes it is to be done forer, sometimes later: And thus, whether the teftator has directed it or not; and much every teftator is presumed to know. One may therefore reafonably doubt how it can make any fubftan- tial difference, whether the teftator has in words directed a conveyance to be made, or by the law; for if the court of fuit, takes notice that the teftator could not intend his ufe should always remain in truftees; but that one principal confidence reposed in them is to con- verify the ufe.

I have faid, one may reafonably doubt of this, and I chofe not to carry it further at prefent out of deference to those great men who have laid any weight on this dif- tinction. The cafe wherein the moft Brong refoning is produced on this Subject, is that of Lord Gower and Byfiff. What my Lord Tafbût faid in his argument in this cafe relative to this point, has been flated to me to be this: "There is another quefion, viz. How far in cafes of truftees executory, as this is, the teftator's intention is to prevail over the strength and legal fignification of the words? I repeat it, I think in cafes of truftees executed or infefted, the execution of the conveyance of the cafe of law and equity ought to be the fame; for the teftator does not fuppofe any other conveyance will be made; but in executory trufs he leaves for them to be done: The truftees are to be executed in a more careful and accurate manner. The cafe of Leonard and the Earl of Suffs, had it been by aél executed, would have been an eftate in fee; the conveyance of the cafe of law and equity ought to be the fame, as the teftator in the cafe of executory truf; the court decreed according to the intent, as it was found expreffed in the will, which must now govern our conffufion; and though all parties claiming under this will are volunteers, yet are intitled to the aid of this court to direct their truftees. I have already faid what I should incline to, if this was an immediate de- vine; but as it is executory, and that fuch conffufion maybe made, as that the iffue may take without any of the inconveniences, which were the foundation of the re- folution in King and Mifling's cafe, and that the teftator's intent is plain that the iffue fhould take, the conveyance, by being in common form, viz. "To the Lady Georfly for life, remainder to her husband for life, remainder to the first and every other fon, with a remainder to the daughters, will be ferve the teftator's intent." Nobody can probably have a greater deference for my Lord Taftbût's opinion than I have; but I think his decree in that cafe, is right, that it did not want the aid of the dif precaution therein made. Consider then how far it amounts to a perjve opinion, even to conclude himfelf.

The ftift words indeed as flated are thefe: "I think in cafes of truftees executed or immediate de- vine, the conffufion of cafes of law and equity ought to be the fame; for that it was the cafe of equity, which has been vouchfawed, that the irreftraint had been void. If by aél executed is meant a deed in the teftator's life-time, which is the proper fene of the cafes, it is certainly right; for all fuch Irreftaints of alienation are void at the Common law. But if it be meant of a devee to truftees upon an immediate trufe, where the conveyance is not made, this conffufion is void; and there is a reafonable doubt of it; and whether, if fhcn a clause of irreftraint had been inferted in a trufe of a trufe executed, (as it is called) the court, when it had decreed a conveyance, would not have been bound to decrees it in Trifefe fettlement, as my Lord Copper did in that cafe. He adds further, and though all parties claiming under the will are confidered, yet they are intitled to the aid of this court to direct their truftees. But if the cafe of what has been called an exefratory trufe from an im- mediate devife in truftees: In both cafes the parties are equally intitled to the aid of this court to direct their truftees in making a conveyance. But toward the end it appears, that this Lordship had not formed any fix opinion to bind himfelf upon this point; for he fays, "I have already faid what I fhould incline to, if this was an immediate devife." This fhews it was only the prefent inclination of his thoughts, without having absolutely de- termined his judgment upon that particular point. And I think it is right to fuppofe that he afterward relented from this; for in the cafe of Willing an d Difford, which was decided near two years afterwards on the 4th July 1755, and has been already flated, this Lordship made the like con- fufion upon a trufe in a deed, wherein there was no di- rection of a conveyance, nor any thing to diflinguish it from what has been called a trufe awarded. In the cafe of Papillon and Vifio, my Lord King was very ferviceable to the prefent rules of law, neither founded him- felf upon, nor made any fuch difcretion; for according to Mr. William's Rep. Rec. 2. p. 478, which agrees with my memory, he fays the diverfity is, where the will palpibly inferts a legal devife, and where it is only executory, and the party must come to this court in order to have the be- nefit of the will: That in the latter cafe the intention fhall 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 come to this court to have the benefit of the will) and that the cafe of all truftees, which must be executed by fubpena.

I have now gone through the general reafoning of the cafe. But there is one thing still behind which is particu- lar to this cafe, and I really think deference as to the determination which ought to be made.

I have already faid this cafe is, in an important re- gard, entirely agreed with his honour the Master of the Rolls, that nothing which has happened since the death of Benjamin Aflon, can vary the conffufion of this will, or the confequential rights of the parties; but the determination of the court must be the fame as to all legal and equitable confequen- ces, as if Benjamin Bagfhou, the devifee, had been very 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 cafe Benjamin Bagfhou had at this time been plaintiff, and praying of the court a conveyance of the moiety of the cafe of the infants upon the foot of the will. That if that had been the cafe, 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 thefe lands to be convey- ed to the ufe of Benjamin Bagfhou, with remainderers over.

Then the question would have arisen directly, whether the remainder to truftees to preferve contingent remain- ders, which flands in the will, ought to have been inferted in the conveyance or left out. If it ought to have been inferted, then the next limitation of the ufe mufl have been to the ftift and every other fon of Benjamin Bag- fhou, the devifee, with remainder to his daughters, and their fift as tenants in common; for the court could not have directed a conveyance to ufe to be made to Benjamin Bagfhou for life, with remainder to truftees to preferve contingent remainsders during his life, and after his de- ceafe to the heirs of his body in the very words of the will. But the ftift and every other fon of Benjamin Bag- fhou, and the daughters of this ftift, and their ftift as tenants in common; for the court could not have directed a conveyance to ufe to be made to Benjamin Bagfhou for life, with remainder to truftees to preferve contingent remainders in that deed, when there were no contingent remainders to be prefered. This was expressly agreed by my Lord King in the cafe of Papillon and Vifio. His words were, as I took them from his mouth, "it appears, that the party has not a right to a conveyance upon the words of the will, it would be a very blundering one, and the court will not decreed that contrary to the in- tention of the teftator." If in this conveyance it
9. Of revoking a will, and where a will shall be set aside for fraud.

By fl. 29 Car. 2. cap. 3. it is enacted, 'That no devise in writing of lands, tenements, or hereditaments, or any clause thereof shall be revocable, 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 personal estates, shall be revoked, nor any clause or provision thereof altered by the deviser, unless it 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, devises the residue of his personal estate to his wife, and after the death, he, by a nuncupative codicil, bequeathed to J. S. all that he had given to his wife, it was resolved good; for, by the death of the wife, the devise of the residue was totally void; and the codicil was no alteration of the former will, but a new will for the residue. Ropn. 334.

Revocations by the act of the party are either express, as where the devisor expressly declares his mind, that his will should be revoked; or implied, as where the effect of thing devised is altered after making of the will. 2 Ab. Eq. Cafl. 769. Sir Richard Templeman's case, Hidb. 4 Ann. in C. B. Lord Hardwicke Lord Chancellor:—The general principle is, that at the time of the devise the devisee must have a disposing capacity, and an estate in the land devise'd; and the estate must remain in the same plight and condition until his death: For the least alteration by an act of his, makes it a different estate, and works a difference; and the devisee's estate in pursuance of the latter 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 operation 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 this reason:—

To reverse for so much of the last decree made at the Exeh as declares, that Benjamin Bagshaw took an estate-tail by the will of Benjamin Afton, and as directs, that one moiety of the clear surplus of the principal, more be paid and applied according to the will of Benjamin Bagshaw: And indeed thereof, as all the particular limitations in Mr. Afton's will are, by the events which have happened, spent and determined, I must decree, that one moiety of the clear surplus of the money, so derived to be paid and applied, shall be in quittance, be part, and to the defendant John Spencer, to the heirs at law of the testator Benjamin Afton.
W I L

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 trustees, that of nominating themselves in the will, to be executors thereof, and would have no effect, to the prejudice of the settlor. It was proved, by reference to the will, that the devise was to the eldest son, and that the other devisees were to take nothing out of the estate, unless they should come to be added thereto by a new will, or by the devisees of the eldest son, and that if there had been a general, it had revoked only pro tanti. Ven. Abr. tit. Devise (P.) Ca. 10. p. 130.

A. by will gave his children several legacies, and to his eldest son 2000/. He died and gave him 400/. to go to Italy, and for a merchandize, and a new publication, being only words of form, and declaring nothing of the testator's intent in this matter. 2 Freem. Rep. 224. Ind. v. Howf.

Defendant's testator by his will gave his four daughters 600/. a-piece, and afterward married his eldest daughter to the plaintiff, and gave her 500/. portion; after that he makes a codicil, and gives 100/. a-piece to his unharniessed daughters, and thereby ratifies and confirms his will, and dies. Plaintiff preferred his bill for the legacy of 600/. given to his wife by the said will. And his honour held, that the portion given by the testator in his final will, and the codicil, is to be intended in satisfaction of the legacy. Id. ibid. I. S. had four daughters, A. B. C. and D. and by his will devised to A. 1000/. and by the same will devised to them 1500/. a-piece for their portions; which last sum were to be railed out of an estate devised by his will for that purpose. A. marries in L. S.'s life-time; and I. S. gave her 4000/.

Portion. And by Lord Keeper Wright, this 4000/.
portion must be taken to be a satisfaction of the 1500/. given A. by the will of her father; and a revocation of the will pro tanti: but as to the 1000/. that being a general legacy, A. must have it. The 1500/.
given her for her portion. Prec. in Chanc. 183. Ward v. Lunt.

I. S. devised lands in S. to A. his son for 99 years, determinable upon three lives, and by his will charges the said lands with an annuity of 40/. per annum to his daughter M. and afterwars devise the same lands for 99 years, determinable upon three other lives, referring 50/.
year rent; this is, during the continuance of the lease, a revocation; but it is no revocation as to the 40/. per annum, there being rent enough referred to satisfy that. Ven. Abr. tit. Devise. (R. 2.) Ca. 16. p. 142. Parker v. Lamb.

(Whose all) devise to B. his younger son 250/.
and afterwards buys him a cornet of horse's commission, and paid 50/.
for it, and it was proved he inten-
tended this should be discounted out of his legacy, and that he wouldrike off much out of the will, as soon as the accounts came to London to him, but died before they came, without altering his will. Decreed that the money paid for his commision, shall go in diminution of the legacy, and be taken in payment and satisfaction for so much. Prec. in Chanc. 263. Hays v. Hays.

If a man devises lands, and afterward mortgages the same for years, and then levies a fine for confinement if he trusts to the same condition; and after a number of years, the will is recancilled; but if there had been a fine for confiscation, it had revoked only pro tanti. Ven. Abr. tit. Devise (P.) Ca. 10. p. 130.

A. by will gave his children several legacies, and to his eldest son 2000/. and after gave him 400/. to go to Italy, and for a merchandize, and a new publication, being only words of form, and declaring nothing of the testator's intent in this matter. 2 Freem. Rep. 224. Ind. v. Howf.

A man makes his will duly executed and attested according to the statute of frauds and perjuries, and at the same time, in like manner, executes a duplicate thereof; and after the testator's death, his son, the devisee of his trustees, 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 witnes-
ses, and the three witnesses subscribed their names, but neither did he sign his name thereto. This he took for the duplicate, by tearing off the seal, and then dies. And the question was, Whether this second will not being good, as a will to pass lands, should yet be a revoca-
tion of the first, and if it should not, whether the cancelling the other should be a revocation thereof within the statute of frauds and perjuries. And it was decreed, that neither the making of the second, nor the cancelling the first, was a revocation thereof; tho' 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 merely a revocation of the first, fo as to signify his inten-
tion of dying intestate, or without any will; but it was intended as an effectual will to pass the lands to the per-
fons, and in the manner thereby devised: And therefore if it was not good as a will to that purpose, it was no revocation of the first, but as it was appointed to be va-
lid and effectual for passing the lands by the second: And if a man by his will devise lands to A. and after makes a second will, and thereby devises the lands to B. if this second will not be good, as a will to pass the lands to B. it shall be no revocation of the devise in the first to A. if it is plain, A. was to lose only what B. was to gain; and if he would have the lands he must do the second thing 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 cancelling or tearing of the first will, that is no revocation of it in this case, because that was no self-fultifying 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 treats the first as of no use: But the first was not effectually revoked by the second: And the act of tear-
ing 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 se-
cond; yet if he does make a second, and intends that as revoking the first, and therefore it be effectual, his tearing or po,
fo, 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. Casits 497.

But if a man cancels or revokes either the duplicate or original will, this is an effectual avoiding of both, they being
being both but one will, and therefore must land or fall together, 2 T. 742. Chinty v. Tyser.

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 wits thereof have, to this my last will and testament, commencing, to put an end ever, and to a duplicate thereof, to be left in the hands of such a one, fix my feet to every sheet thereof, and to the last of the said sheets my hand and seal, in the presence of three witneffes, who all subscribed their names in due form of law." Afterwards the teflator being moved, he subscribed other truces to his wife, and make fome alterations in his will, fends for a fcriver, and gave directions to prepare a draught of instructions for another will, which the fcriver does accordingly, which the teflator read over and approved of very well, and fets his hand to it; and being at a tavern, thinking he had now made a new will, he pulls out of his pocket the firft will and tears off the feal from the firft eight sheets, which the fcriver feeing, aifed him what he was doing; why fays he, I am cancelling my firft will. Pray fays the fcriver hold your hand, the other will is not perfected; it will not pass your real estate for want of being executed properly; and if you make another will and tear off the feal for that, fays he, and immediately defigned from tearing off any more of the feals; and in fome short time dies without having done any thing further to perfect the second will, or cancel the firft. After his death, on application to the Spiritual court by the wife, who was made executive of his left will, they filed it before the Chief Juftice, and he admitted it to prove: And on a bill brought by the legates against the wife, and other trues, to have a fpechifck performance of the tref in the firft will, and that the effate might be fold, pursuant to the directions of that will; it was infifted upon, that the firft will was revoked either by making another will, and tearing off the feal; or by the fcriver's death, but Lord Chancellour held, that the fub曾任 will could be no revoeration as to the real estate, not being executed according to the flature of frauds and perfurges: And that as to the tearing off the feals from the firft eight sheets, that not being done animus cancellabilis, was no revocation; and that the feal remaining whole to the left sheet was sufficient, and in firft need it was not neceffary that all the feals fhould be fealed. But because the Spiritual court had fentenced the second a good will of the perfon al effate, his Lordship held it a good will for the whole perfonal effate, and that fuch legates of perfonalties in the firft will, as are left out in the second, must have the same execution as thefe other legates had in the firft will chargeable on the real effate, if the fame legates were devised to them by the second will, that they fhould still continue chargeable on the real effate; provided fuch legates were not increafed or enlarged by the second will; For though the second will was made in effeff to charge the real effate, yet, fix the real effate remained well devised by the firft will, they fhould be still secured by that real effate; for they were not devised out of land like a rent, but only secured by land, which before was well devisfe but for new abolute perfonalty devises by the left will, they fhould be chargeable only upon the real effate; and it was not difputed by the wifes, that they had the firft paid out of the perfonal effate before the other legates, in the firft will, charged upon the real effate, becaufe they had several funds, out of which they were to the teflator's devise, the perfonal legate in the left will out of the perfonal effate, which was well devised by that will, and fubjefted the fame as he preferred from thefe other legates, which was devised by the firft will, out of the real effate.


A. in December 1715 makes his will, and signs, feals, and publisheth it in the presence of four witneffes, who are called and subscribed the fame as he prefuming from thence, by gives to H. P. his fon, and 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-
for life: And afterwards the said A. for 1200/. fine de-
fixed the said mortgage to J. S. for ninety-nine years, if
three lives lived so long, yielding and paying 50/- per
Ann. to A. the testator, his heirs and assigns; and though
it was held at the Rolls to be a revocation, yet on an ap-
peal to my Lord Keeper, he decreed it to be no revoca-
tion: and that the said J. S. should be paid an annuity,
and he and his assigns for ever; whereupon there was no
amount to a revocation by implication, it must be a re-
cessary implication: And the act must be wholly ine-
cessary with the devise.
2 Term. 495. Lands v. Parker.
2 Term. 284. S. C.
A vendor lends to trustees to pay his debts, and
then to pay his wife 200/- per Ann. for her life; and the
testator living several years after, his debts increased from
2000. to 10,000. for 8000. whereas his said title trusts were
bound, and afterwards A. the testator, by deed and age,
conveys his lands to his said trustees, to pay to his
wife 300/., and to pay and discharge the debts, and the
wife joined with him in the free and conveyance, yet this
shall be no revocation of the wife's 200/- per Ann., and
the full shall have the 2000. out of the surplus money
after the debts are paid.
2 Term. 117. S. C.
Whereas Earl of Lincoln had mortg-
gaged the manor of S. to the defendant Flores and his heirs
for 12000. and afterwards, by will, in default of
his male of his own body, devised it to Sir Francis Clifton
(who was to succeed him in the honour for his life,
with remainder to his said son and other sons in tail wise,
with remainder, if the said son and other sons should
have no issue, to the other household goods at his chief house at S. should remain there as heir-borns to the next heir male, who should be
Earl of Lincoln, and made Sir Francis Clifton executor:
Afterwards the said Earl (who was very whimiscal) took
a fancy to one Mrs. Calvert, daughter to the Lord Boli-
more, and afterwards married her, and thereby the said
fancy was confirmed, and the estate devolved under
the will, as was exprest: to them only, and to their
fault 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 reft in trust that the
trustees should fill it, to difannul that part limited to
Mrs. Calvert, and the surplus money to his executors
and administrators: There was no further progress to-
ward the marriage, and some time after his death without
an alteration of his will, and the honour de-
ferred to Sir Francis Clifton, (who had but a very small
estate, if any) who died soon after; and the plaintiff,
his eldeft 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 cross bill, that they might redeem and
have the estate conveyed to them. And the only question
was, whether the lease and release were a revoca-
tion of the will, and whether for the reasons thereupon
Earl had but an equitable interest, the whole estate being
before mortgage in fee, and therefore it ought to be con-
cidered according to equity; and that though such a lease
and release would have been a revocation of a devise of a
legal estate, yet it will not be so here; for the reason the
law goes upon judging it a revocation is, because the
lease and release is a conveyance of the estate, and so to
make a conveyance of the estate, as there is in cafe of a legal
estate: It is plain, as to his intention, that he did not intend any 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 should continue to him and his heirs,
which is just as it was before; and that marriage having
never taken effect, the estate continues as it was.
And therefore it must be agreed that he never expressed
any express revocation of his will; and the court of
Chancery is so far from following the strict 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,
in large part, is the reason of that devise, of which the
additional estate shall be no 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 estate, 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 estate,
and that equitable estates are governed by the same rules
that legal estates are, and there is no fraud or circum-
vention or sinister equitable circumstances, to make the
court vary from the rule of law; and therefore it
must be a diminution of the heir, who is always favoured in all
courts. And as to the cafes 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
a conveyance of the estate, 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 Mer. Eq. Cas. 417.
2 Term. 202. refolved it was a revocation: And upon
an appeal he held in Dem. Prer. by a majority of two
J. S. v. A. B., C., referred it.
So where Sir John Hushand by will in writing, dated
the 12th of February 1708, devised several pecuniary
and specifick 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-
hand upon him, and the heirs male of his body, with di-
vers remainders over: Afterwards by lease and Releas,
the 25th of August 1709, Sir John Hushand, together
with J. S. the trustee, conveyed several manors and
lands in the county of Warwick to trustees and their heirs,
in the use of himself for life, without impeachment of
waifs, and that the trustees and their heirs should execute
all the terms of said lease in full, and the life interest of
Sir John by writing under his hand and seal, or by his left
will and testament, should direct or appoint; and in 1710 Sir John died, without altering or revoking the said will,
or making any appointment touching the said real estate:
And the question was, Whether this lease and release
were a revocation of the will or not? the original bill of
Pollen being to establish the will, and the crofs bill to fet
aside the will, and have an account of the profits. And
it was decreed, that the lease and release were a revoca-
It and it cannot be a revocation of the will, as it
was a fair and reasonable conveyance of the estate, to receive
the rents and profits until her marriage or death, and in cafe the married with the content of two
of the trustees and her mother, then to convey the
pre-
misses to her and her heirs: But if the died before marriage,
and marriage was not made, nor any issue from
them, to convey to other persons: Afterwards S. married in the life-time of his
father, and with his consent, and he settled part of those
lands on her and her husband, and died. And it was
held, that this settlement was no revocation of the will,
but the devise of the other lands.
So if J. S. having four daughters, A. B. C. and D.
and in 1705 by will devises several parcels of his estate severally
to his four daughters, and int all he devises to trustees all
his lands, tenements and hereditaments, in E. and F. or
either of them, or near thereto adjoinning, in trust for
A. until her marriage or death; and in case she marries
9 Ye.
John Bayley, in which it was resolved by the Judges, that where a man unmarried made a will and devised away his estate, and afterwards married and had a child, and died without a revocation of his will, that the alteration of circumstances was, in itself, a revocation of the will. And a cafe was cited out of Cicer, where one thinking his son dead, devised his estate to another; yet the son returning, it was held he should have it, because it was to be suppoed he would not have disinherited him without reason. On the other side it was argued, that the alteration of circumstances was, in itself, a revocation of the will. And a cafe was cited out of Cicero, where one thinking his son dead, devised his estate to another; yet when the son returned, it was held he should have it, because it was to be supposed he would not have disinherited him without reason. On the other side it was argued, that the alteration of circumstances was, in itself, a revocation of the will.
WILL

upon the same day the testatrix 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 500l. from her, and that now she had given her this 500l. she must alter her will; and for an attorney to do so; but when she came, the will was left sealed, and died soon after. And it was her husband's intention, that the remainder should not be sufficient to pay the 500l., upon the note, and the 100l. legacy, and likewise the legacy to the other two daughters. And two points were made; first, if this 500l. note, that should be taken in part of satisfaction of the 100l. legacy; Secondly, it was evidence that the testatrix did not intend to alter her will; and per Lord Ch. Parker, circumstances of testatrix and her family may be given in evidence to explain the will, but not any parcel 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 testatrix has not advanced part of the legacy in her lifetime upon the marriage of her daughter? and the evidence is only as to the satisfaction; and thereupon his Lordship admitted the evidence to be read; and directed the matter to see if there were any sufficient to pay all the legacies; and upon report, the court determined as to the same due to the plaintiff. Fin. Abr. (V. 2.) Ca. 10.

I. S. devised to M. her husband, six houses in bar of dower, and, subject to his legacies, he devised (the title of his real and personal estate to his two daughters, and their heirs-beneficiaries, forever, in the event of the marriage of M. his eldest daughter with B. I. S. by marriage articles, covenants to forfeit 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 also one moiety of all such personal estate as he should leave at his death, subject only to his debts, and such legacies as should amount to 5000l. in trust for B. and his said intended wife for their lives, and afterward to be paid to their children.

Lord Ch. King held, that this was not a covenant, but a covenant, and therefore in law no revocation of the will by which the testator had disposed of his real estate, yet that the same being for a valuable consideration, was in equity tantamount to a conveyance, and consequently in equity a revocation of the will, as to the moiety of the six houses devised to the testator's wife, so that the moiety of the six houses given to the testator's wife, 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, he being his intent that they should have them, the court held, that he should have a satisfaction out of the remaining moiety, and that the wife should not suffer by the marriage articles, there being enough out of the other moiety to supply and satisfy the devise of the six houses to herself. Therefore as to the other moiety of the real estate, it was decreed, that the testator's widow was to have for her life the six houses, part thereof, and the residue of such moiety, subject to the interest thereon, for life, in the event of the marriage of the two daughters equally. 2 P. Will. Rep. 328. Rider v. Wager.

I. S. on his marriage with E. his daughter, settled 500l. per annum on her; he afterward surrendered some copyhold estate to the use of his will which he made, and gave the copyhold to his wife. After the birth of two of his wife's children, became intestate to 1500l. in right of his wife; then I. S. levied a fine, and made a new settlement, and increased her jointure 500l. per annum, but never altered his will. And per Lord Chancellor, The settlement is a revocation of the will, for such lands as are comprised in it; but the copyhold is not, None of these are governed by the will. Sir Geo. Cohan, 24. Laws, v. Lawley.

I. S. in 1666 leaves to A. 8l. 8s. 4d. 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 3200l. and devises thereof to C. (who was heir at law to B.) and her heirs, and gives several legacies, 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 Chan. 53.

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 same 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 ueses were declared to be the husband's, and the residue to be the wife's, and as to the other moiety in feealty to B. in fee. In 1724. A. died without revoking or altering her 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 10 May 1722, and the fine levied pursuant thereto, was not a revocation of the will. And Raymond Ch. J. Page, Probyn, and Lee Juffiers, certified their opinion to be, that the will was not revoked by this deed and fine, and that A.'s title of the land contained in this deed and fine, doth pass by the will. In re A. Ex. ttd. Devlyn. (R. S.) Ca. 30. p. 149. Lutter v. Kirby.

By marriage articles it was agreed, that the wife's lands, whereof she was feided in tail, should be conveyed to the husband in fee; they married, and the husband made his will and devised those lands; then the husband and wife were both by the marriage articles conveyed into the recovery of those lands, to fuch ues, and of the remainder, they flowed jointly appointed, in default of such appointment, to the use of the husband and his heirs. She died without appointing. Per Hartwiks Chanc. This amounts to a revocation of the will. And in this case the following rules were laid down, 5 Bot. Abr. 538. ASS. Rep. Fawfus v. Freeman, M. 25 Geo. 2.

If a man feid in fee devides, and then makes a conveyance by fine, feidiment, or recovery, and takes back a new eillet, it is certainly a revocation; and so if he takes back the old ufs 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 renovation pro tantis. The rules are the same in the devise of a real, and of a personal estate, with regardito charges made afterwards: But if a man, having an equitable estate in fee, devise by fine, and afterward when taken back a new eillet; it is no revocation. The equitable estate will not pass by will, but the heir at law by decent of the legal estate, maybe a trustee for the deicide, who may call for a conveyance of the estate. If a man contracts by articles for the purchase of lands, and before a conveyance devies the lands and dies; the devisee shall have the lands, and call for a conveyance from the vend. tor. If a man, feided of a legal estate, makes his will, and then conveys the legal estate to another in trust for himself, it is a revocation. If in this case the husband had either the legal estate by the recovery to execute it into the equitable estate, the recovery was a perpetuation of the revocation; but new ufs are appointed, and the wife died without making any appointment, that will not alter the case, for here he took the fee by the recovery differently qualified, subject to conditions, differently conveyed, but if the parrents make partition, law a fine, and declare the ufs, that will not be a revocation, because it is to extinguish the partition.

A. being feid in fee, settled his estate by leaf and release in 1712, to the ues thereafter specified, with liberty nevertheless at his will and pleasure to dispose of, either the said estate, or any part thereof, for any eillet or estates which he should think fit, and to revoke all and every the ues thereby limited, and then declares the ues to himself for life, with several remainders, a remainderer over to D. in (fee) tail. The deid deed contains the following powers: First, a power for A. by any deed or writing, signed, sealed, and delivered, in the
W I L

the presence of two or more witnesses, to demine, leaves, limit, or appoint, the said premises to any person whatever, for any term or terms whatsoever, 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 continuance of his life, for himself, his heirs, and assigns, to grant, sell, or demine the said premises, or any part thereof; or by any deed or writing under his hand and seal, or by his lawful will, &c. in writing, sealed, delivered and published, in the presence of three or more witnesses, to revoke, repeal, and make void, all and every the covenants, conditions, and tracts and limitations before railed, and to declare or limit the same, or such new usufruct as should seem most meet to him, and then and from thenceforth the estates before limited, and so revoked, to cease, &c. and that the said A. may dispose of the same premises, and every part thereof, to such other person and uses as he shall think fit, and thing, &c. to the contrary notwithstanding. The first part of this proviso, viz. to grant, sell, or demise, appears interlined in 1715. A. by lease and release, reciting that he was indebted as specified in a schedule annexed, conveyed his estate to W. B. and S. &c. and their heirs, in trust to pay to the latter, by his devisee, in lieu of any right or title, or any use or benefit of the same premises, and after payment thereof, to pay the overplus, if any, and re-convey such parts of the premises as should remain unford, to the said A. or to such person and uses, and to such uses, &c. as by any deed or writing, under his hand and seal, or by his lawful will, &c. could lawfully be conveyed. This release was attested by two witnesses only. A. died without issue. Lord Chancellor, afflicted by Lord Chief Baron Reynolds, and the Master of the Rolls, was of opinion, that A. intended to reserve an absolute power over this estate, and either to revoke it by an express revocation, or by a conveyance to different uses, which are the two kinds of revocation that are as evident as well from the preambles which is interwoven with the consideration of the deed, as from the proviso: And in consequence of that intention it is reasonable to suppose he meant to have a power to defeat it, without taking any notice of it, and if no power had been reserved in the body of the deed, then would the preambles have given a general power. That a conveyance to different uses would have been a revocation as effectual as an express revocation, and that he thought any other construction would be forced and unnatural. That if A. had dropped with the first words of the proviso, viz. to grant, sell, or demise, he had reserved in the body of the deed, such a power as the deed was able to convey, to give the estate (tail) by will. That the express power of revocation could not by this construction be thought nugatory, for within the power he could not be restrained for revocation of a conveyance and a reconveyance; nor could he have devised it. But admitting it to be so, he thought general intention is not to be superceded, because a subsequent part of the deed is purposely; And that the whole legal estate passed to the trustees by the deed of 1715. Docted on 12th of June 1730. 2d Probyn. 238. Probyn v. Lord Frasenhge. Fitzgib. Rep. 207. S. C.

Though a covenant or articles do not at law revoke a will, yet if entered into for a valuable consideration, accounting 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. Catter v. Low. 4th Deed. rec. in the case of Sir Durbamn Ryder v. Sir Charles Wager. Id. 232.

Tenants in tail, remainder to himself in fee, devotes his lands 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. 165. Moravos v. Turner.

A. the 23rd of June 1729 made his will, and executed two duplicates thereof before three witnesses, and made B. and C. (since deceased) executors; and one of the duplicates was delivered to B. A. died the 2d of Oct. 1750, and about three weeks before his death he made several alterations and oblations with his own hand, in the duplicate remaining in his own custody, after four days, a new devise of his real estate, and a new residuary legatee, and a new executor, entirely striking out the names of the first devisee, residuary legatee and executors, and altered several of the former legacies, and in some instances to another person, and to the last thereof his hand and seal, and to a duplicate of his former will, retained with him to the end of 1750. 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 devil's 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 will in his hands, though B. lived in town. After the death of the tefator, all the testamentary papers or schedules were found lying all in hooves and separate papers upon a table in his cloister, not signed or executed; and the duplicate of the will was found on the table, altered and obliterated, and (at first) with his name and seal thereto whole and uncancelled. Sentence was given in the prerogative court, for the duplicate of the will in B's hands, and confirmed upon appeal to the delegates, viz. Lord Raymond Ch. Justice, and Probyn J. Dr. Trotcle and Dr. Bramgham, (who were all the delegates present) after four days, a new hearing, and upon a collation of view (grant- ed 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. Pinfield) viz. of the Judges Reynolds Ch. B. Page J. and Campus B. and two Doctors of the Cris town, chiefly on the following, as the reporter says he heard, that the tefator did not intend an interfeyy, and by the alterations and oblations, in his own duplicate of his first will, he appeared only to design a new will, which as he never perfected, the tefator ought to find; and the tefator not calling for the tefator, even within a reasonable time, after the prefumption of his intent not absolutely to destroy his first will, till he had perfected another, which he never did. Wis. Atr. tit. Deviis, (R. S.) Ca. 17. p. 140. Hyde v. Maffen.

"S. devised all his real and personal estate to trustees A. B. and C. their heirs, executors, and administrators, in trust to pay 150. per Annum, to the plaintiffs (his two fathers) for their lives, and after several legacies, the for- plus in trust for the different ministrants at Reading, &c. and gave 300l. to each trustee, and 20l. per Annum to each, while they took care in executing the trust. Afterwards the executor of the first 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 105. 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 10l. But J. S. kept both the deeds in his own custody, and soon after died: And the said A. B. and C. B. assumed administration of the estates as real and personal trustees. The trustees for some years paid the 15l. per Annum, a piece to each of the testator's killers; but afterward refused to continue the payment thereof, and also refused to pay any of the disjointing miscents; but kept the rents, &c. to their own use. The two killers (the heirs at law) and Lord Chancellor Gwilliam appeared in equity by their attorney, infifting, that the deed of conveyance of the real estate, and the deed of gift of the personal estate had revoked the will, and that there was a refining trust for them, as heirs at law; or at least that they (the killers) were intitled to their 15l. per Annum. Defendants, as a sufFicienc for the revocation of the conveyance by bringing their bill, there being a clausc in the will, that if they (the killers) disputed the will, then they should forfeit their annuitics. Lord Chancellor Taltct decreed, that the annuities should be paid to the two killers, with the arrears and growing payments thereof; but the suspane was decreed to go to the disjointing miscents; 5 Bac. Abr. 541. MSS. Rep. 17. 54. Lord & Ux el al. v. Spilois et al.

Sir John Wobyck by will, in Auguf 1722, devised his estate to trustees for the term of 200 years, for payment of all his debts. In December following he deviced the same to other trustees for 500 years, to pay to some particular person, for any and every debt due to the testator, and decreed their annuities by bringing their bill, there being a clause in the will, that if they (the killers) disputed the will, then they should forfeit their annuitics. Lord Chancellor Taltct decreed, that the annuities should be paid to the two killers, with the arrears and growing payments thereof; but the suspane was decreed to go to the disjointing miscents; 5 Bac. Abr. 541. MSS. Rep. 17. 54. Lord & Ux el al. v. Spilois et al.

WILL

his hrther, but falling ill soon after, at a great distance from his father, of a consumption, of which he died, without executing the will. Lord Chancellor directed him to make a new will, some short time before his death, whereby he devised all his real and personal estate to the defendant (being a kinman) upon trust to pay his debts and legacies; but says nothing of the reftantes; but there was a general clause of revoking all former wills, &c. There were several witnesses to the will, who swore aye to the contents of the act, and it was suggested to induce the testator to make this new will, sufficient to satisfy the court that it was unfairly obtained, but the will was regularly signed, sealed, and published, according to the statutes of 29 Car. 2. and fo a good will at law.

Lord Chan. Cooper, having taken time to consider of it, decreed for the personal estate, having just allowances, &c. to and convey the real estate to the plaintiff, subject to the payment of testator's debts, as a trustee for the plaintiff. Fin. Abr. tit. Devifs, (Z. 2.) Ca. 11. p. 107. Branfby v. Keridge, &c.

A bill was likewise brought to set aside a will of a personal estate, and to pay the probate, upon a suggestion of its being obtained by fraud; and the defendant demurred to the jurisdiction of Chancery; whereupon an in-junction was moved for, infifting that the demurrer confided the fraud, and that fraud was cognizable in equity as well as in the Spiritual court; but the injunction was denied. Rep. 282, Stephenson v. Cooper.

Where a bill is brought to prove a will of lands, the sanity of the testator must be proved; but it is otherwise in a case of a deed of trust to fall for payment of debts. 3 P. Will. Rep. 93. Harris v. Ingledew.

N. B. A will having relation only to the testator's death, and not to the making, for till his death he is master of his own will, and therefore the will a papit in Ireland, was held to be avoided by a subsequent statute made in that kingdom, which enacted, that the lands of papits there shall not be devisable, but defend in gavel-kind. Fin. Abr. tit. Devifs, (H. 6.) Ca. 7. p. 273. Bark v. Morgan.

It has been said, that wills (of personal 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 personal estate, to the value of 5000l. as was proved in the cause, but one B. his servant had in his hands, was proved to have been so alleged to A. that he was left to take the will, to carry it away in a week before his death, when he lay in his sick bed, at six of the clock at night, it was really proved by two minifters, that the will was, a year before, actually married to the defendant M. and was then his wife, and in which the defendant M. procured the licence for the marriage of A. to B. and this will being of such a nature as to give rise to the suspicion, appeared there as of saga practice as could be, in gaining the will, the tef- tator being non tenus, both at the time of making this will, and also at the time of his fuppofed marriage; and that B. fuppofed the first will: Yet that will to be fup fct up, being proved in the prerogative court, and the matter in question being purely relating to the personal estate, the Lord Chancellor was of opinion, that whilst that probate flood, this matter was not examinable in Chancery; and though the fraud was fully proved, and was opened to him, he would not hear any proofs read, but dismis the bill. 2 Vern. 8. and g. Archer v. Maffie.

So though the will was fuppofed and proved to be a will of a personal estate, wherein one of the legacies was for; 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. Williams, 388. Plume v. Beale.

But though wills (of personal estates only) gained by fraud, and proven 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. Neifen v. Oldfield.

It has been determined likewise, that the courts of equity can hold plea concerning a legacy, and likewise concerning the devolution of the reftantes, which is but a leg- acy: And they may in notorious cafes decree a legatee, who has obtained a legacy by fraud, to be a trustee for another: As if the drawer of the will should infiff his own
own name instead of the name of the legatee. 1 St. 67. Marriot v. Marriot.

But it has been decreed in the House of Lords, that a will of a real estate could not be set aside in a court of equity for fraud or imposition, but must first be tried at law on affidavit, etc., being matter proper for a jury to inquire into. 1 Atk. Coyn. 40. Brand v. Kerridge.

Precedents or forms of wills.

The will of H. Lord C, whereby his real estates were limited in tail male to several of his next relations (succes-
sively) in degree of condescending, in order to obviate any discontent or rivalry in the title, both of the third and
third relation, with several legacies and bequests. From 3
Haw's Conv. 836.

As to, for and concerning all my manors, lands and
hereditaments, which I purchased in the county of H.
and O. I devise the same to my nephew the Duke of Q,
and for his life, without impeaching the use of or for any
manner of wants, with remainder to the honorable R.B.
and T.S. of Efq. and their heirs for and during the
natural life of the said Duke of Q, in trust to prefer
continueyants herein after limited; and from and
immediately after the death of the said Duke of Q, as
to all the relict and residue of my manors, E. in the
country of R. and to be disposed of by me as by me and
every other son and heirs of the said Duke of Q, in
tail male respectively; and in default of such issue (with
reminders to Lord D. G. another nephew, and to
Earl of B. another nephew, and afterwards to H. Earl of
another nephew, all in tail verbaem as before to the
Duke of Q, with remainder to tefator in fee); and I will
that the several tenants for their lives, who respecti-
vely shall happen to be such by virtue of this will,
of any my real and freethold estates whatsoever,
when impeffion, shall be enabled to make leases
not exceeding 21 years, &c. and as to and con-
erning my house and garden, with the appurtenances
and all other my estate lying and being at P. in the
county of S. being copyhold, and which I have furfer-
ded to the use of my will, I devise the same to my ne-
phew the Duke of Q, and the heirs male of his body;
remainder to my nephew the Lord D. G. and the heirs
male of his body; remainder to my own right heirs; and
as to all my personal estate, I dispose of the same as
followeth, (to say all that) my house, with the
the garden thereunto adjoining, with all and fanguar
the appurtenances thereunto belonging, wherein I now
 dwell, situate in or near — (being held by me by a lease
from the crown) and all my estate, term and interest, of,
in, and to the said house, or to the garden, which I shall hereafter renew in
the same state, and to all my plate, jewels, my
all my diamond and ruby rings; all the rell and resid-
ude 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 rell and residude of
my said personal estate 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 so, or the survivors or survivor of them,
from time to time, to sell and dispose of, or any part
of any part or parts of my personal estate; and the monies arising from time to time from such sales or dispositions, to lend, pay or lay out, as they shall think fit to them, of such one of them as will so, or the survivors or survivor of
them, shall judge best; and to the intent that my said
executors or trustees, and 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
their successors any of them, from time to time, to
appoint such agents under them or with such salaries as they shall think fitting; and that none of my said trustees shall be answerable for the receipts and accounts of the other of them; and that none of them shall be answerable for the misapplications of any per-
son or persons used or employed by them, or any of them, or any part or parts of the said monies, or any of them, for my use or use of others, and the said trustees and
others hereby and hereafter, by any writing or writings 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 E. and R. T. two of the executors). And my will and devise is, that my said executors be, and shall stand intrusted as to the sum of 500l. of, &c. and the interest thereof, after the rate of 5l. per Cent. per Annum, 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 (not-
withstanding her coverture) and not in the power or dis-
posal 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, think fit to give or appoint, that the disposition of the interest 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 re-
ceipt, fully discharged and in fact; (fereval other such legacies to nieces in the same words) I devise to my ne-
phews (the Duke of Q, of, &c.) the sum of 500l. 0. 0.
paid to him in six calendar months after my decease; and my further will and devise is, that my said executors do and shall stand intrusted as to the further sum of
500l. of like lawful money, and the interest thereof, after the rate of 4l. per Cent. per Annum, from the time of my decease, for the separate use and benefit of the said C.
Dutchel's of J, so as the same, both principal and interest, may be at her disposal (notwithstanding her coverture) &c. (verbaem as the 500l. to the nieces before); I direct
and my further will and devise is, that my said executors or executor, or executors, within three calendar months after my death, to cause to be paid to such of the poorer the prelates after mentioned, all the monies arising from the said trusts, with the
funds of money following: (that is to say) of St. M. in
the fields 100l. of St. J. Wylminger 100l. of L. 30.
of G. in T. 20l. of A. in Wilts 50l. and of M. in Ox-
fordshire 50l. I give to my servants after-named, (that
is to say) to T. D. 100l. to M. E. 100l. to T. F. 100l.
to D. G. 100l. to T. E. 50l. to Mrs. J. 50l. and to
all such others as shall be my dothickervants at the
said house in or near St. J. P., within the liberty of Wyl-
ingter 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 other do-
thickervants in any of my mansion houses, that there
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 dothickervants I would have
paid within three calendar months next after my death;
and above that, the sum of 20l. payable during the
year's wages, to each of my wise and servants for
myself, and likewise to each of my nieces, of the
Lord D. G. his executors, administrators and assigns, for
the residue of a term of years which I have therein, to-
gether with all the pictures, personal estate, goods and
furniture, as shall be in or about the same house, and other
the premises, at the time of my death (except plate)
and I make, name, ordain and appoint my said nephew
the Duke of Q, and my said nephew R. Earl of R. the
said H. Earl of R. and R. T. Efq: executors of this my
will; and I devise to the said executors, their executors,
administrators and assigns, all my personal estate of
what kind or nature forever or wherefoever, not herein before
disposed of, upon the truths following, (that is to say) The
said executors or their administrators and assigns, do
and shall, by the interdict, produce and proceed there-
of, or by charging, mortgaging, selling, or otherwise dispo-
fing of the said personal estates, or any part thereof, as
they my said executors, or the survivors or survivor of
them, shall from time to time think fit, pay my funeral
expenses and my debts (if any) and the legacies after
mentioned and the legacy to each of my nieces; and the
monies and estates hereby and hereafter, by any writing or writings attested by two or more credible witneses, 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 intrusted as to the sum of 500l. of, &c. and

will and testament, contained in five folios or skins of
parchment fixed together at the top, and sealed with my
own hand and seal, and to the same to sign, sign, or seal,
have set my hand and seal, and to every other part of the
skin thereof have set my hand, declaring this to be my
last will and testament, the day and year first above writ-

Signed, sealed, published and declared by the above-named the right hand of W. L. Lord C. as and for his last will and testament, in the presence of us, who at his request and in his presence have sub-
scribed our names as witnesses thereunto, as we have likewise done the same to a duplicate of this will written
in the same handwriting at the same time.

A widow's will, whereby the devises to her for a ma-

land, &c. and copious and leaflese eflates, in

of the said real estate, and to the heir, and devise to
the said H. L. his heirs, executors or administrators, shall and
and do, pay all my debts, funeral charges, and all my legacies
herein after by me given, and after the payment of all
my debts, funeral charges and legacies, then in trust that
the said H. L. his heirs, executors or administrators, shall and
do, out of the rents, issues and profits of the said
premises devised unto him, or by sale thereof, be the said
H. L. his heirs, executors or administrators, shall and
shall pay the said sum
and the remaining sum of 2000/.
and for such purpose, as aforesaid, which sum shall be the
and devise to the heir, and devise to the said H. L. his
heirs, executors or administrators, shall and
do, out of the rents, issues and profits of the said
premises devised unto him, or by sale thereof, pay the full
sum of 2000/., unto my fon-in-law W. D.

Eqs. at the end of six months after he the said W. D.
shall have, for and in trust for the said H. L. and his
and devise to the said H. L.

shall become payable
unto the said W. D., that the said H. L. his
heirs, executors or administrators, shall and
do, out of the rents, issues and profits of the said
premises devised unto him, or by sale thereof, pay the
full sum of 2000/., unto my daughter E.

be the said H. L. his
eirs, executors or administrators, shall and
shall pay the said sum
and devise to the said H. L. and his
and devise to the said H. L.

shall become payable
unto the said W. D., that the said H. L. his
heirs, executors or administrators, shall and
do, out of the rents, issues and profits of the said
premises devised unto him, or by sale thereof, pay the
full sum of 2000/., unto my daughter E. (if the said H. L. shall be living)
together with interest for the same after the rate aforesaid from
the death of the said W. D. until payment of the principal; and
if my daughter E. shall happen to die before he shall
attain the six months after his full age of 21 years, and
before such a settlement as aforesaid made by him, then
in trust that the said H. L. his heirs, executors or admin-

S. H. his heirs, executors and administrators; and if my

in law W. D. shall live to the end of the said six months after his
attainment of his full age of 21 years, and
and devise to the heir, and devise to the said H. L. his
heirs, executors or administrators, shall pay the said sum
of 2000/., with interest at the rate aforesaid unto said child
and children of the late E. as the said H. L. leave behind her; and
if the said H. L. shall have no children or children behind, then
in trust that the said H. L. shall be the heir as above.

S. H. his heirs, executors and administrators; and if my

in law W. D. shall live to the end of the said six months after his
attainment of his full age of 21 years, and
and devise to the heir, and devise to the said H. L. his
heirs, executors or administrators, shall pay the said sum
of 2000/., with interest at the rate aforesaid unto said child
and children of the late E. as the said H. L. leave behind her; and
if the said H. L. shall have no children or children behind, then
in trust that the said H. L. shall be the heir as above.
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 the same, to be used to pay residue of my debts and legacies, and their heirs and assigns: Provided always that if there be more than one son, and if the said W. D. shall make a settlement as aforesaid, then the eldest son shall have no part or share of the said P. estate; and for want of such limitation or appointment by the said E. (if the shall leave no child or children at her death) then the residue of the said estate, S. H. his heir, and assigns, to be subject to the trusts herein before declared of and concerning the said P. estate; or if my said son S. H. his heirs or assigns, shall make default in payment of the above mentioned sum of 200l. and interest according to the trusts before mentioned; then and in either of the said cases, the said gift and devise shall be void; and I then and there give and devise the fame premises so far as unto them as aforesaid, unto the said R. W. and R. G. their heirs, executors and administrators, according to my respective last wills and testats herein, upon the fame trusts as herein before declared of and concerning the said R. W. In like manner I will, and do hereby declare, that my executors hereafter named shall permit and suffer my said daughter E. D. to have the possession only, and not the property of my total beds, 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 said W. D. shall die before him, then I give and bequeath the same goods and things unto and amongst such child and children as the said shall leave behind her at her death; and if the issue no child at her death; then I give and bequeath the same goods and things unto my executor hereafter named; and as to all the rest and residue of my peronal estate (excepting what shall be by me hereinafter or hereafter in my will is and shall be bequeathed) 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 200l. and interest; and I do hereby constitute and appoint my said loving son S. H. sole executor of this my last will, etc.

A devise is a test a charity school. From 3 Wood's Conv. 289.

Also I give and devise all that, etc. to (the trustees) to have and to hold all the last mentioned—to the said (trustees) and to their heirs and successors for ever; and I also make over to them and their heirs and successors, all my book, trunks, and 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, directions and agreements herein after mentioned, limited, expressed and declared of and concerning the same premises; (that is to say) That they the said trustees, or the major part of them, shall from and immediately after my decease pay or cause to be paid out of my rents, issues and profits of the same premises the sum of 20l. per annum, during the time of their terms, charges and deductions whatsoever, to the said school—misters herein after named for the time being for ever, by two equal half-yearly payments, to wit, at Midsummer and at Christmas yearly; the first of which payments to be made on such of the said two feasts as shall next happen after my death, for the teaching and instructing of the poor girls of W. race, for the time being, as follows: that the said trustees shall keep one or more proper convenient place there, as my said charity trusses, or the major part of them shall appoint; And my further will is, and I do hereby appoint and direct, that if my now fave the said M. R. be living at the time of my death, then the said M. R. or such other person as the said M. R. may appoint, shall be chargable for the said school miftresses, and for the said school premises, and all and every manner of charges and deductions whatsoever, to be the school miftresses to instruct the said girls during her life; and after her death, if the said R. D. her fitter be then living, then I hereby appoint the said R. D. or such person as the shall appoint, from thenceforth to be the succeeding school miftresses 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 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 miftresses for the said girls, during her life; and I do hereby further direct, that and immediately after the decease of the survivors of them the said M. R. R. D. M. B. and E. B. that then every succeeding school miftresses for the said school, shall be nominated and appointed by such person as the shall appoint, or per her executor, and shall be chargable for all and every manner of charges and deductions of this my will be intided to and have the property of my said now dwelling house in W. aforesaid; and my devise is, (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 miftresses in cafe the will not accept of the same; and if my will is, that the then present, and every succeeding vicar of W. shall on the first Sunday in every month catechize the said children with others in W. church aforesaid; and that on refual or neglect thereof, every wife of such vicar shall lose the benefit of being school miftresses to the said school: And my further will is, that the said 20 poor girls, with others, shall be taught to sing psalms there 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 20l. for his doing; and also the further yearly sum of 20l. to the vicar and vestry named, and the said school miftresses, and the further yearly sum of 20l. to the vicar, and the said school miftresses, and the further yearly sum of 20l. to be paid at the same two feast days by seven half-yearly payments, clear of all deductions, and in such manner as aforesaid: And my further will is, that every school miftresses 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 this the said 20 girls shall be taught by such persons as shall be chosen by the said ftrustees, or the major part of them, immediately after my death, and be then fixed in the said school; and if then, or at any time after, there shall be wanting in W. aforesaid, the full number of the said 20 girls so intitled to have the benefit of this my charity (intended diffenters children as well as church people); that the said school miftresses, shall be added to the aforesaid number, and shall be kept at the full expense of the said charity; and if that number be reduced to two girls only, and as often as the said shall happen, my will is, that they the said trustees, or the major part of them, shall chuse and make up such number of girls out of some other parishes or parishes next adjoining to W. aforesaid; and further, that no such girls shall be admitted to the said school if they shall have been in the said school before 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, Midsummer-day, and Michaelmas day, or any
Item, I give, devise and bequeath unto my loving friend M. A. of &c. and to his heirs and assigns for ever, all that my part, share and portion of tithe, of what nature, kind or quality forever, illuming and payable to me out of those several farms, situate and being in the parish of &c. And all other my tithe in the hundred of D. aforesaid; 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 behoof to such vicars or curates of the said livings, 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. Coller, 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, illums 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 senior fellows of the said college.
WIN

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 11. 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 11. 9d. 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 11. 10d. 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 11. 6d. 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, and no more, the yearly sum of 11. 7d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty-one windows, or lights, and no more, the yearly sum of 11. 8d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty-two windows, or lights, and no more, the yearly sum of 11. 9d. 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, or upwards, the yearly sum of 2s. for each window, or light, in every such house.

Sel. 3. Provided nevertheless, that it is the true intent and meaning of this act, that the said several and respective yearly sums herein before charged upon every window, or light, contained in every such dwelling-house as aforesaid, shall be paid over and above the said respective duties of 31. and 11. upon houses before mentioned.

Sel. 4. Provided always, that no house or cottage in that part of Great Britain called Scotland, that has not more than five windows, or lights, shall pay, or be liable to pay, the duty of 11. imposed on each house by this present act.

Sel. 5. And that if any rate or assessment hath been or shall be made in pursuance of the said former acts, or of any of them, for raising all or any of the said rates and duties granted upon houses, windows, or lights, for and in respect of the quarter, half-year, or any other time, after the said 10th day of October 1766; every such rate or assessment, so far as the same relates to the raising such rates and duties in respect of such quarter, half-year, or other term, after the said 10th day of October, shall be null and void.

Sel. 6. That the rates and duties by this act granted shall be paid quarterly, at the four most usual days of payment in the year; that is to say, on the 5th of January, 5th of April, the 5th of July, and the 10th day of October, by even and equal portions; the first payment thereafter shall fall due upon the 5th day of January 1767.

Sel. 7. These rates and duties, and arrears of former acts, to be paid into the exchequer, according to the rules, as referred in two acts of 20 Geo. 2 and in acts 21 and 31 Geo. 2, and 5 Geo. 3, and all the powers, authorities, &c. of the said acts are extended to this act.

Sel. 9. Commissioners for the recital act to meet for the execution of this act, on or before the 11th of Oct. 1766.

Sel. 10. Separate affinements to be made out for these duties, and to be certified and returned by the 23d of December 1766, by surveyors to certify their charges for the half-year's assessment, by the 20th of Feb. 1767; appeals to be heard between the 6th of March and 4th of April 1767; duplicates of the affinements to be transmitted as formerly; and after the 5th of April 1767, the affinements to be settled by the Solicitors for the whole year.

Sel. 11. Monies arising by the former rates to be applied as the present.

Sel. 12. The sum of 91,485 l. 0s. 6d. to be yearly replaced out of the said rates, to the sinking fund, in lieu of the like sum payable thereout by virtue of act 20 1766, &c.

Sel. 13. The sum of 93,217 l. 10s. 1d. and one sixth, to be referred annually at the Exchequer out of the said rates, towards paying the annuities established by act 31 Geo. 2.

Sel. 14. Surplus monies to be carried into the sinking fund.

Sel. 15. Treasury to make good out of the sinking fund, any deficiency of the duties upon coals, culm, and cinders, after the 10th of October, to pay the annuity due to the Southsea company.

Winsofr. The mayor and bailiffs, &c. of Winsofr are to be the assessors to maintain the great bridge there, and receive tolls for carriages, cattle, &c. passing over it, and bages going under the same. Sess. 6 Geo. 2. c. 15.

Wine, The old affize of wine, fasting, piller. 52 H. 3. f. 6. s. 2. Ord. pro piller. incrips temp. c. 5 vol. i. 1767.

Mayor, of London to present wine sold against the affize, 6 Ed. 1. c. 15.

Wines shall be sold and reily, and shall be effayed twice in the year, 4 Ed. 3. c. 12.

Foretalling Gaffon wine, felony, 27 Ed. 3. f. 1. c. 5. repealed, 37 Ed. 3. c. 16.

No Gaffon wine shall be bought but in ports, 27 Ed. 3. f. 7. 38 Ed. 3. f. 10. 42 Ed. 3. c. 8.

Importation of wine may be regulated by the King, 38 Ed. 3. f. 11. c. 11.

Englishmen, not artificers, may buy wines in Gnaffon, 43 Ed. 3. c. 2.

The price of wines limited, 5 R. a. f. 1. c. 4. 6 R. a. f. 1. c. 7. 7 H. S. 6. 6. 7 Ed. 6. c. 5.

Retailing of sweet wine and claret prohibited, 5 R. a. f. 6. c. 5.

New impostions by the King's officers in Guazzon prohibited, 23 H. 6. c. 17.

The measure and custom of Malorys, 7 H. 7. c. 8.

Foreign wines not to be imported between Michaelemas and Christmas, 23 H. 8. c. 7.

The prices of wines to be assified by the King's great officers, 23 H. 8. c. 7. 28 H. 8. c. 14. 34 & 35 H. 8. c. 7. 37 H. 8. c. 23. f. 23.

Porrons restrained from keeping wine in their houses, 7 Ed. 6. c. 5. f. 2.

The number of censers restrained, 7 Ed. 6. c. 5. f. 3.

Selling wines to be drank in the seller's house prohibited, 7 Ed. 6. c. 5. f. 2.

The prices of wines by retail to be limited by proclamation, 5 Ed. 6. c. 5.

Wine not to be retailed without licence, 12 Car. 2. c. 25.

The penalties of retailling mixed wine, 12 Car. 2. c. 25. f. 11.

The prices of wines to be limited by the Lord Chancellop, 12 Car. 2. c. 25. f. 13.

Duty on wine, 18 Car. 2. c. 5. f. 6.

An impott upon wine, 20 Car. 2. c. 1. 22 Car. 2. c. 3. 30 Car. 2. c. 2.

The profits of the wine-licence inveiled in the crown, and an equivalent granted to the Duke of Kend, 22 & 23 Car. 2. c. 6.

A duty of 81. per ton upon French wine, and 12l. upon other wines. 12 Car. 2. c. 3. Made
with

Wine

Wittenham. (Fervitum Namium, compounded of the Saxon Hipten, aliena, i.e. non civitas) is a forbidden taking, as the taking or driving of a dregs to a hold, or out of the county, so that the thief comes upon the repluvia make deliverance thereon to the party detained. In which case the writ of Wittenham, or De Lito Namium, is done to be a felony for the taking as many of his beasts that did them unlawfully detain, or as much goods of his into his keeping, till he hath made deliverance of the first dregs: Also if the beast lie in a forest or castle, the thief may take him with the Feste Comitatus, and beat down the castle, as appears by the Statute of 17/18 Geo. 1st, and Britton, cap. 27. Wittenham, according to Bradton, ibid. 17/18 Geo. 1st, 2. cap. 37. and Hofm. 1. cap. 2. seems to signify an unlawful dregs made by him that has no right to detain. Cawd., Edit. 1727. See Replevin.


Witting (self) is one that gives evidence in a case; an indifferent person to each party, sworn to speak the truth, the whole truth, and nothing but the truth: And if he will be a gainer or loser by the suit, he shall not be sworn as a witness. 2 Litt. Ab. 700.

Winds upon a witness to an arbitration bond, to make affidavit of the execution. Stra. Rep. 1. Where the bail a subscribing witness, he shall be obliged to testify. Stra. 466.

Attachment granted against a witness for not attending on a Subprena. Stra. 510. A witness ought to have reasonable notice of a trial. Stra. 510.

Attachment against a witness for not attending a trial. Stra. 816.

There must be personal service on a witness to warrant an attachment. Stra. 1054.

No attachment against a witness, unless reasonable expenses were tendered him. Stra. 1150.

Attorney prefect at putting in an answer, not obliged to give evidence of it. Stra. 1122.

What age the law will allow an infant to be witnesses at.Stra. 700.

A witness to a deed becoming administrator, &c. his hand may be proved. Stra. 671.

If a witness becomes interested, his deposition taken before cannot be read. Stra. 101.

Laying a wager on the cause does not incapacitate for a witness. Stra. 652.

Party whose deed is forged, no witnesses. Stra. 728.

Bankrupt not admitted to prove his own act of bankruptcy. Stra. 828.

If the witness to a deed becomes infamous, he is considered as dead. Stra. 833.

Quaker no witnesses in an appeal of murder. Stra. 856.

Affidavit of one convicted of forgery not to be read to support a complaint. Stra. 1148.

Party supposed to be defrauded; allowed a witnesses in perjury. Stra. 1239.

A witness by a co-obligor. Stra. 35.

Vender witnesses as to title, where no covenant for warranty. Stra. 445.

Wife of Prochein Amy a witness. Stra. 506.

Prochein Amy no witnesses. Stra. 1026.

Guardian on record not a witness. Stra. 506.

Proprietor of a note a witness on an indictment for tearing it. Stra. 595.

Party tourious contract cannot be called to prove a payment. Stra. 633.

Giver of note no witness on indictment for perjury in denying an agreement relating to it. Stra. 1043.

Defendant in indictment no witnesses on indictment for perjury at the trial. Stra. 1104.

One whose wife has an annuity devised for her separate use, is not a good witnesses to the will. Stra. 1253.
WON

WOO

Wife of a party admitted to prove her husband's death. *Stran. 568.*

Wife witnesses against husband, on indictment for assault upon herself. *Stran. 633.*

'The wife of one defendant cannot be a witness for the other on an indictment against two.' *Stran. 1069.*

Creditor of bankrupt no witness to prove him a gambler. *Stran. 507.*

A creditor allowed to prove debtor not initided to his discharge on the Mont act. *Stran. 650.*

'Sheriffs' affidavit no witnesses to prove attempt to arrest.' *Stran. 650.*

'Lord of cumbury manors disallowed witnesses to estabhlish a right in a lord of another manor.' *Stran. 658.*

An informer intided to part of the penalty is no witness. *Stran. 310.*

In trespafs for beating his servant, the servant not admitted a witness. *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 servitium amittit. *Stran. 944.*

In an action against the master for the negligence of his servant, the having a release from the defendant is competent. *Stran. 1083.*

'A landlord who claims wages, no witnesses concerning the loss of the ship.' *Stran. 414.*

Original debtor taken as a servant, to prove the payment by another. *Stran. 507.*

'Goldsmith's servant who overpays money is a witnesses in actions for it again.' *Stran. 647.*

'He that apprehends himself interested, the not strictly so, is no witnesses.' *Stran. 129.*

'The party who excepts to a witness may call him afterwards.' *Stran. 480.*

Witneses admitted where remotely interested. *Stran. 575.*

'A.flops 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.*

'There are two qualifications to an election of an officer, he who has but one only may be a witnesses.' *Stran. 583.*

'Where one defendant is fined, he is a witnesses for another.' *Stran. 633.*

'The tenant in possession cannot be made a witnesses in ejectment.' *Stran. 632.*

'A corporator who has acted under the right claimed, may be witnesses to prove the usage.' *Stran. 1069.*

Guides.

'Wood, A profitable herb much used for the dying of blue colours, mentioned in the Stat. 2 H. 8. cap. 2. See Ships.'

Wolds. (Sax.) Signifies a down, or open champaign ground, void of wood; as Wold in the Wolds, Caufied in Gloucefsire, &c.

Wolfhead, or Wolfshoofd, (Sax.) Captap Lapiumin, 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 brute so hurtful to man. Leg. Edu. Conf. Bract. lib. 3.

Women. Laws relating to. A woman is capable of being a feotax, and of voting at an election for one. *2 Strange 1134.* A ballot is within the statute of P. & M. against taking away young women. *Held. 1161.*

'The chancellor to vacate obligations, statutes or recognizances obtained from women by fraud and imposition.' *3 H. 6. c. 9.*

'Shall have livery 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. f. 6.* For other matters, see Baron and Fein, Wigan, Marriage, Rape, Felony.

'Wolng, a Saxen word for field.' *Splen.*

*Effects.* *Stat. 35 Hen. 8. c. 17. fel. 1. enacts, that there shall be 12 hundis in an acre of wood under 24 years growth.*

'SElt. 3. Underwoods felled at 14 years growth, or under, shall during 5 years next after the 26th of April after their feling, be preferred from deftruction of cattle, on pain that the owner thereof shall forfeit for every rod of land unsawed, for every month 3l. 4d. and underwoods above 14 years growth, and under 24, be so fell'd, shall during 6 years next after the 20th of April after such feling be preferred as aforesaid, upon the like pain.*

'Sel. 3. None shall convert into pasture or tillage any such underwood or coppice, containing two acres or above, which now be wood or underwood, and put er or the owner thereof to the expenses 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 converted.'

'Sel. 9. Half of the forfeitures to be to the king, the other half to him that will sue for the same by bill, plaint, action of debt or information, in any of the King's courts of record, in which no pleader, wager of law, or tithe shall be allowed.'

'Sel. 13 Ediz. c. 25. adds two years more than the four years limited by 35 H. 8. c. 17. for preferring the sprit to destruction of cattle.'

'In information upon the Stat. 35 H. 8. for not felling of coppices; First exception was, that it is not allledged 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 she shews not what coppices they were; 3dly, Because it is recited that he shall forfeit for every rod 2l. 4d. where it should be for every rod of land. But it was said the parliament roll is rod of land; and fo was the last impression; but for the two first exceptions the party was discharged. *Cen. Ediz. 117. pl. 21. Mib. 30 & 31 Ediz. in B. R. Edwards v. Edgeworth.*

'Information upon this statute for grubbing up wood in Buckinghamshire, Contra formam 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 set forth, as upon the 5 Ediz. concerning apprentices; which has been heretofore considered. To which it was answered, that the proviso in the statute is general, and not tied up to wood growing at the time of the act; and Contra formam 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 formam Statutis: notwithstanding they do but make the conclusion upon a statute, that it is not the case before set forth, and are themselves no part of the case, but disclose the result of the premises, and will not of themselves make a case without sufficient premises, which ought to be set forth the law, as it is upon the statute. Et adjournator. But after words judgment was arrested upon this exception. *Hard. 195. pl. 1. Trin. 1655. Meriv. 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 anwered that this is a milkshake for that law takes place only in such cases where justices of peace, or of affife, have power by law to hear and determine; but by this act of parliament, upon which the present information is ground, they have no power at all; for the prosecution is tied up to courts of record, and thus that law has always been construed. *Hard. 195. pl. 1. Trin. 1655. Meriv. v. Ulin.*

On falling woods where others have common, one quarter to be included. *25 H. 8. c. 17. f. 7.*

After two years owners may put colts and calves into inclosed woods, *35 H. 8. c. 17. f. 2.*

Penalties of expiring wood without licence, *1 & 2 P. & M. c. 5.*

'The deer's shall not be poled for iron works, *1 El. c. 15.*

Oaks
W O O

Oaks to be felled in barking time, 5 El. c. 3.

Wools to be withdrawn two years later, and further directions about putting in carr, 13 El. c. 25, f. 18.

Wood growing within 22 miles of London, &c. not to be cleared for iron works, 23 El. c. 5. 27 El. c. 10.

Penalties of healing wood or destroying young trees, 13 Car. 2. c. 2.

For the preservation of timber in the forest of Dean, 2. Car. 2. c. 3.

Penalties of malicious cutting down trees, 1 Gen. c. 1. 8. 6 Gen. c. 1. 16.

Damage to be made good by parish, 1 Gen. c. 1. 48.

6 G. c. 1. 16.

Wood, underwood and coppices, how taxable, 30 G. c. 2.

Collector, &c. impowered to cut down and fell wood growing on woodland affloged, where no difficulty is to be had, 4 G. c. 2. c. 38. See Timber, Trees.

Woodford, Some quantity of cates or other grain, paid by customary tenants to the lord, for liberty to pick up dead or broken wood, Cruwell, edit. 1727.

Woodfield, (Woodfieldham) Seems to be the gathering or cutting of wood within the forest, or money paid for the same to the forestees; and the immunity from this by the King’s grant is by Crompton called woodfield, fol. 157. Co. on Litt. fol. 223. It is certain wood lies to be paid for the same money, for taking wood in any forest. Cruwell, edit. 1727.

Woodmen, Are those in the forest that have charge especially to look to the King’s wood. Crompt. fur. fol. 146.

Woodnote, Is the old name of that court of the forest, which is now, by the statute of Charte de Forêts, 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 Monnow’s Forest Law, cap. 22. fol. 267.

Woodpulp-court, Is a court held twice in the year in the forest of Chasles, for settling all matters of wood and agiment there, and perhaps was anciently the same with woodnote-court. Cruwell, edit. 1727.

Woodward, (woodward) Is an officer of the forest, whole function you may understand by his oath fet down in Crompt. fur. fol. 201. Woodward’s not to walk with bow and shafts, but with forest bills, Monnow, Part 1. pag. 150.

Woodford, Wool and yarn may be sold in Woodford in market and fair days, 18 Eliz. c. 21. See Stratford.


Nothing shall be taken in the name of maleaste of a fair of wool, St. de tal. non excisit. 34 Ed. 1. f. 4. c. 2.

Exportation of wool prohibited, 11 Ed. 3. c. 1. By Englishemen, 27 Ed. 3. f. 2. c. 3. 9. 12 Ed. 3. f. 4. c. 6.

Custom on wool limited, 14 Ed. 3. f. 3.

The price of wool shall be ten, 18 Ed. 3. f. 2. c. 3.

The seller 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 woollen, 13 Ed. 3. f. 2. c. 3.

Custome on wool made, 31 Ed. 3. f. 1.

13 R. 2. f. 1. c. 9.

Sibley shall not be paid for the package, 34 Ed. 3. c. 19.

Licence to denizens to export wool, 31 Ed. 3. c. 24.

Nothing shall be demanded but the ancient custom, and no subsidy shall be fet on wool without affent of parliament, 36 Ed. 3.

The forfetten of lands and goods on denizens exporting wool discharged, 14 Ed. 3. c. 1.

Regrating of wool prohibited, 14 R. 2. c. 4. 22 H. 8. c. 13. 37 H. 8. c. 15. 5 &c. Ed. 6. c. 7.

Nothing shall buy woolen yarn but to make cloth, 8 H. 6. c. 22. R. 3. c. 8. 5. f. 14.

Vol. II Part 22.

Tunisian and woolen yarn not to be exported, 8 H. 6. c. 22. R. 3. c. 8. 5. f. 14.

Exportation of wool to the north of Trefe, &c. prohibited, 3 Ed. 4. c. 1.

From what places wool may be exported to Colonies, 4 Ed. 4. c. 2. 3.

Contracting for wool before it is shorn, restrained, 4 Ed. 4. c. 4. 4 H. 7. c. 11.

To be carried only to Colonies, 12 Ed. 4. c. 5. 14 Ed. 4. c. 4.

Exportation of cloth unfrond, permitted, 5 H. 8. c. 3.

Revocation of letters patent made to the citizens of York for flipping wool, 21 H. 8. c. 17.

Against deceit in winding and packing wool, 23 H. 8. c. 17.

25 Ed. 3. c. 2. 25 Ed. 3. c. 2.

Inhabitants of Halifax permitted to buy wool and sell it again, 2 & 3 P. & M. c. 13.

Wool and yarn may be freely bought and sold in the market and fairs at New Woodfield, 15 Ed. c. 21.

Wool-cards not to be imported, 39 Eliz. c. 14. f. 2.

Penalties of whipping, &c. on artificers immeasing wool or yarn, 7 Jac. 1. c. 7. 1 Ann. f. 10.

Offenders not making satisfaction to be fet in the flock, 7 Jac. 1. c. 7. f. 2.

Exportation of sheep, wool, woolfell’s, fuller’s earth, and scouring earth prohibited, 12 Car. 2. c. 32. made felony, 9 &c. 14 Car. 3. f. 18. 7 & 8 W. 3. c. 28. 9 & 10 H. 1. c. 3. 40.

Penalty on owners of ships knowing offences, 12 Car. 2. c. 32. f. 3.

Ships of aliens importing prohibited wool forfeited, 12 Car. 2. c. 32. f. 9.

Not to extend to wool exported from Southampton to Jersey, Guernsey, &c. 13 Car. 2. c. 32. 14. f. 13.

The preffing of wool in package, or laying it near the thore, prohibited, 13 & 14 Car. 2. c. 18. f. 17.

Wool not to be carried in the night, 13 & 14 Car. 2. c. 18. f. 9.

For want of wool-cards or card-wire not to be imported, 13 & 14 Car. 2. c. 2. f. 10.

For buying woolen, 18 Car. 2. c. 4.

No corps to be buried but in woolen, and affidavit to be made, 30 Car. 2. c. 3. 32 Car. 2. c. 1.

Directions for the entering and registering of wool that is not, 1 W. & M. c. 32. 7 & 8 W. 3. c. 28. 9 & 10 W. 3. c. 30. f. 5.

Quantity of wool that may be transported to Guernsey, Jersey, &c. 1 W. & M. f. 32. f. 4.

Ships exporting wool forfeited with treble value, 7 & 8 W. 3. c. 28. f. 8.

Ships to cruise to prevent exportation, 7 & 8 W. 3. c. 28. f. 8. 10 & 11 G. 11. c. 10. 15. 5 G. 2. c. 21. 13 H. 3. c. 10.

Irish wool not to be imported at Exeter, 4 & 5 W. & M. c. 24. f. 10.

Directions for buying and selling wool in Kent and Suff., 9 & 10 W. 3. c. 40. f. 4.

Wool and woolen manufactures shall not be exported from Ireland to any place but England, 10 & 11 W. 3. c. 10.

Ship importing contrary to the said forfeited, 10 & 11 W. 3. c. 10. f. 2.


Penalty on commanders of ships conveying at exportation of wool, 10 & 11 W. 3. c. 10. f. 18.

No wool or woolen manufacture of the Plantations shall be exported, 10 & 11 W. 3. c. 10. f. 19. not to extend to customs, 11 & 12 W. 3. c. 13. f. 9.

Regulations of the penalties of exporting Irish wool, 3 G. 1. c. 21. f. 4.

Exporters of wool not paying the penalty, may be transported, 4 G. 1. c. 11. f. 6.

Returning, felony, without clergy, 4 Gen. c. 11. f. 5.

Provisions against exporting wool, extended to woolfellers, fullers earth, &c. 5 G. 1. c. 11. f. 14.
WOR

Wool laid near the floure in Ireland, forfeited, 5 G. 11. f. 21.

Length of weaving bars and trunks, 13 G. 1. c. 23. f. 1.

Tenters to be measured and inspected, 13 G. 1. c. 23. f. 1.

Sixteen ounces to the pound of wool, 13 G. 1. c. 23. f. 2.

Ships to cruise round Great Britain and Ireland, to prevent the unlawful exporting of woolen 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, forfeitures of the ship, &c. 12 G. 2. c. 21. f. 11.


Penalty of offering to bribe an officer, 12 G. 2. c. 21. f. 25.

Penalty on infuring the exportation of wool, 12 G. 2. c. 21. f. 29.

Justices may make search for cloth stolen off tenters, or wool, &c. left to dry, 15 G. 2. c. 27.

Wool from Ireland may be imported into Lancashire, 25 G. 2. c. 14.

Wool from Ireland may be imported into Yarmouth, 25 G. 2. c. 19.

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.

Penalty of paying workmen otherwise than in money, 27 G. 2. c. 3. f. 3.

See Drapery, Fellows, Manufactures, Woollen Manufactures.

Woodenknives and Woavers. See Drapery, Wool.

Woodellers, mentioned in flat. 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. Cowell, edit. 1727.

Woolfenshed. See Woolfshed.

Woolshed. Its ground, wharf and keys, in the parish of All Saints, Barking, in London, vested in trustees for his Majesty, his heirs and successors, &c. 8 G. 1. c. 31.

Woollen Manufactures. Combination of weavers, woollen merchants, &c. prohibited, 12 G. 1. c. 34.

25 G. 2. c. 33.

Extended to combers of irifey wool, frame-workknitters and flock-making, 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. 23.

30 G. 2. c. 12.

Punishment of end gatherers, 13 G. 1. c. 23. f. 9.

Having in custody cloth stolen from the rack, or wool left to dry, first offence treble value, third transgression, 15 G. 2. c. 27.

Wood-nagle, mentioned in flat. 51 H. 3. flat. 5 is, the city or town where wool was sold. See Staple.

Woolnouth. See Churches.

Woolwitlers. Are such as wind up every fleece of wool, that is to pack’d and fold by weight, into a kind of bundle, after it is cleared in such manner as it ought to be by the flauter, and to avoid such decent as the owners may want to obviate by thrusting in locks of refuse stuff, and other dross, to gain weight. They are sworn to perform that office truthfully between the owner and the merchant. See the flat, 8 H. 6. c. 22. 23 Hen. 8. cap. 17. and 18 Eliz. 25.

Worsted. 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.

Worsted. Single worsteds may be exported to any place, without paying the duties of Calais, 17 R. 2. c. 2.

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Worsted. Single worsteds may be exported to any place, without paying the duties of Calais, 17 R. 2. c. 3.
And in the city of Brindisi a great workhouse is erected, for the better employing and maintaining the poor, governed by a corporation, s. 7 & 8 H. 3. So in the cities of PortoFrej, Clastis, and Canterbury, by the Statutes 5 & 6 Ed. 3, c. 1, and 1 Geo. 2. For parochial workhouses, see 2 Doorn.

Wett. or Wacht. (from the Saxon Wurth.) A curtilage or country farm. Matt. Wiilf. 870.

Clerie of Land. Is a certain quantity of ground, farmed by let in the Manor of Kingfield in the county of Hereford; and in the place of such tenants are called Mer-


Vorch. (Vexillum maris,) Is, where a ship is perished on the sea, and no man escapes alive out of it: The Grievous is Naffragium. This treach being made, the goods that were in the ship being brought to land by the waves, belong to the King by his prerogative, or such other person to whom the King hath granted treach. But if a man or a dog, or a cat escape alive, so that the party to whom the goods belong, come within a year and a day, and prove the goods to be his, he shall have them against all other claims, and that without cost, and in 17 E. 2. c. 11. Co. Litt. 46. Braden, lib. 2. c. 5. Num. 7. This in the Grand Caufmary of Nor-

manda, c. 17. is called Vorthe, and latined Ferjicium, and in some ancient charters it is written Seajyrfes, gauda Sea upwerps, that is, ixtium maris, from Up-terpen, gierce. By which, and other antiquities, it appears that treach did not only comprehend goods that came from a perishing ship, but whatever else the edid did call upon up-ward the land, were it precious stones, fihes, or the like, as appears by the statute made 17 E. 2. c. 11. called Statum Prerogation Regis. See 2 Iffy. 167. See. c. 1. 2 Ed. 1773.

Stat. Wiflin. 3. 3 Ed. 1. c. 4. "Concerning wrecks of the sea, it is agreed, that where a man, a dog, or a cat, escape quick out of a ship, that such ship, nor barage, nor any thing within them, shall be adjudged a wreck; but the goods shall be saved and kept by view of the sherife, coroner, or the bailiff, and delivered into the hands of such as are of the town, where the goods were found; so that if any foe for those goods, and after prove that they were his, or perished in his keeping within a year and a day, they shall be refouled to them without delay; and if not, they shall remain to the King, not being claimed by the owner or his assigns. And the goods shall be deliverd to them of the town which shall anfwer before the juries of the wreck belonging to the King. And where wreck belongeth to another than to the King, he shall have it in like manner; and he that otherwise doth, and thereof be attainted, shall be awarded to prifon, and make fine at the King's will, and shall yield damages also. And if a bailiff do it, and it be fololowed by the lord, and the lord will not pretend any title therunto, the bailiff shall anfwer, if he have where-

of, and if he have not wioled, the lord shall deliver his bailiff's body to the King."

Many times the action by the Common law was before the making of this statute; and some have holten that the Common law was, that the goods wrecked upon the sea were forfeited to the King, and that they be forfeited also since the statute, unless they be faved by following this statute. To this answer with Mauricius, Molio iurisprud, qui noni non laterent, et veterum libri 45, Braden, who wrote before this statute, proves, that this act is but a declaration of the Common law. 2 Iffy. 166. cit. Brit. lib. 3. 3. 3. 4. 12. Brit. fs. 7. 26. 15. 166. cit. Brit. lib. 1. c. 41. and 2 Iffy. 166. cit. Brit. Lib. c. 1. f. 13. and c. 3. f. de wrecks. Where a man, a dog, or a cat) After this statute was made, and wrote an act of the ancient laws before the fame, and it more large than the words of the act, for therein is named only of a man, a dog, and a cat, that escapes alive; and this author speaks generally of any beast, hawk, or other living thing; so as he pursues not this act, but treats of the Common law. 2 Iffy. 167. 5 Rep. 107. b. S. P. in Sir H. Cowesby's case: And this statute being but declaratory of the Common law, there these three instances are put but for examples; for besides these two kinds of beasts, all other beasts, fowls, e. b. bds, hawks, and other living things are understood, whereby the owner, fish, or property of the goods may be known. And of these goods for 5 years, any unjustifiable mercers, &c. and other, lib. 3. 3. 3. 15. 168.

Altho' this statute speaks only of a wreck, yet it extends to Perithem, Jefium, and Liger. 2 Iffy. 167.

The case wherefore originally wreck was given to the crown, by the statute, was a kind of piracy, and the King pro- vided for this, that the King should have the profite of the same, in case the goods were wrecked at sea. But if a man have good reasons to believe, that the goods so wrecked are not goods of the King's prerogative, but are goods of a private person, then the King can only have the forces of the same, and not the goods.
King 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 to the King, then if the owner cannot of his own accord claim the goods as wreck by his mark or cinct, or the book of cata
tomis, or the testimony 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 the next year and day, that the verdict be given for him after the year, it is fool's cut.

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 case upon the land. 2 Ed. 168.

To another than to the king.] Wreck may belong to the subject either by grant from the King, or praecipitation. 2 Ed. 168.

Of ancient time wreck of the sea and other casualties, as treasure-trove in the land, strays and the like, were prima inventaria quisvis vitis populi, sedid quas ad Rege transmitto fuarent, quasi suis vitis populi, sedid Reipublice vitis populi, and by a custom of the sea, the finder shall have it at this day. 2 Ed. 168.

And be it otherwise why, &c. Which is to be un-
derstood, that the King's justices, with whom the party is attainted, shall set the fine; Et non Dominus Rex per se in Camera sue, nec alter eram se, nisi per justiciarios sua, et his de officiis Regii, &c. per justiciarios & legem justificationis. In an information for landing goods without paying or ac-

Seizing the goods were wreck, and call upon the land of C. who had wreck of the gaff appropriated to his manor adjoining to the sea, and that C. sold them and sold them to the de-


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. Vaughn 164. Shepherd v. Gofnold. The words of the Statute of 12 Car. 2. c. 4. of turn-

nageto and poundage granted to the King, &c. of all mer-

chanties, &c. to be imported, &c. to 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 the words wreck imported, and not imported as to what belongs to the King, and the like adjudging the judgment accordingly. Vaughn 160, 168. 170. Hill. 23 & 24 Car. 2. C. B. Shepherd v. Gofnold & al. Mealy 276. (5th edit.) lib. 2. c. 5. f. 9. says, that in the like case in all circumstances, Hill. 6 W. 3. C. B. between Power and Sir William Pertman, the judges, and more particularly Thoby Ch. J. seemed to be of opinion that goods wrecked or flutum should pay custom. Ed. Raym. 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 Court-

ney v. Bauer, he said that he would not have suffered me to argue it, because he had been by B. R. and that the most persona sermonis; and that always since the case of Shepherd v. Gofnold, Vaugh. 159, it had never been a doubt, but that wreck should not pay custom. Ed. Raym. Rep. 501. S. C. of Courtney v. Bauer having been adjudged in C. by B. R. by 3 f. that no custom is ought to be paid contra to the opinion of Trudy C. J. a writ of error was granted in the case of Power and T. J. and judgment given without any reason given by the court upon the authority of that case in Vaugh.

Goods cast into the sea to unburthen a ship in a storm, and never intended for merchandise, are wreck when cast on the shore without any shipwreck. Per A. & E. 174. 22 & 23 Car. 2. C. B. in case of Shepherd v. Gofnold & al.

Declar'd goods, viz. declared by the owners, and cast into the sea, which happens upon various occasions, as coming from infected 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 Breton, nor from him. In Gofnold's case selected derelict goods; which it is a question not tried by Sir W. Raymond, &c. in the matter of a minor, insofar as to what is a delict minor, at what age a Delict, and erit, for Brack. by Tanday Ch. J. Vaugh. 165. in case of Shepherd v. Gofnold & al.

In Tullow for an anchor, &c. a special verdict found that the plaintiff was adult of this anchor, &c. and that he could have brought the same case to the sea, and that the coutum of the minor is, that if any ship or boat sailing or floating on the sea flinke upon the foil of the said minor, so that it perishes, it shall not be wreck, yet the said anchor and cable belong to the lord, and that the ship to which this anchor, &c. belonged struck upon the foil of the minor, &c. adjut. and bilater pont, but that the men in it were faved, and that the defendant failed the anchor and cable to the use of the lord; adjudged that this custom is void, [it being] without any consideration. The reporter says, Note, no custom of salvage is found. 3 Lew. S. 32. Hall. 32. Cor. 2. C. B. Gare v. Burkenham. But where an action was brought 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 flamin & refinsiam maris, to take care of the sick and wounded, and of burial of the dead, and to preferre the goods cast there, for the use of the proprietors, and in consideration thereof to have the said anchor and cable of the ship to carry them, and that this 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 Powell and Rede, the only justices then in court, were of opinion that such custom is unreasonable, it being for encouragement and safety of navigation; fed adjur.

But afterwards it was adjudged for the defend-

ant. 3 Lew. 307. Trin. 3 W. 2 & M. in C. B. Simp-

son v. Bishbound.

Wreck may be claimed by praecipitation, and may belong to the lord high admirail by praecipitation, for it is an ancient custom, time whereof, &c. per Rel. Ch. J., and said he made no doubt but wreck belonged to the admirail about the inque ports, and such places where he was most constant in ancient time. 12 Med. 260. Hall. 11 W. 3. in the case of Rigger and Braundwairt.

If a man, either by grant or praecipitation, has right to a wreck, yet the court will not allow to make the nec-

essary consequence he has a right to over the same land to take it. And the very pollution of the wreck is in him that has such right, before any feiture. 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 same privilege goes to the grantee thereof; per Cor. 3 Med. 249. 3 Psy. 3 Ann. B. R. Ann.

It seems that the taking of wreck before feiture cannot be felony, because no one has property of the goods at the time of the taking. Hoth. Plat. C. 93. c. 33. f. 24. f. it seems agreed.

Wreck to be valued and delivered to the towns, &c. 4 Ed. 2. c. 8. 1 Ed. 2. c. 11.

The King's prerogative in wreck, whales and fug-

rines, Fausig. Reg. 11 Ed. 2. b. 1. c. 11.

Directions for preferring ships in distresses, 12 An. 2. f. 18. 76 Geo. 2. c. 10. f. 6.

Salvage to be paid, 12 An. 2. f. 18. f. 2. M.

Awards of shipwreck men without clergy, 12 An. 2. f. 18. f. 5.

Penalty of fraud or neglect in officers of culfoms, 12 An. 2. f. 18. f. 7.

Sealing goods of small value petit larceny, 26 Geo. 2. c. 19. f. 2.

Reward for saving any vessel or goods, 26 Geo. 2. c. 19. f. 7.

Officers of the customs may raise the salvoge by sale of the vessel or cargo, 26 Geo. 2. c. 19. f. 8.

Peculations by clerk of the peace, 26 Geo. 2. c. 19. f. 8.
Committees of land tax, duty, sheriff and officers of excise, to put the 12 Ann. fl. 2, c. 18, in execution, 26 Geo. 2. c. 19. f. 9.

The 12 Ann. not to affect the jurisdiction of the cinque ports, 4 Geo. 1. c. 12. f. 2. 26 Geo. 2. c. 10. f. 10. Alluding any person in the salvage of any veHice transported 26 Geo. 2. c. 11. f. 11.

Writ, (Brev.) is the King's precept, whereby any thing is commanded to be done touching a suit or action; as the defendant or tenant to be summoned, a defendant to be taken, a defendant to be redressed, etc. and these writs are diversely divided in divers respects; some in respect of their original, some in respect of their manner of granting, are termed original, and some judicial. Original writs are those that are sent out for the summoning of the defendant in a personal, or the tenant in a real action, before the suit begins, or rather to begin the suit: Those are judicial which are sent out by order of the court where the cause depends, upon occasion alter the suit begun. Old. Nat. Brev. fl. 51. and 115. and the judicial are known from the original thus, because the Trench of that bears the name of the chief justice of that court whence it issues, whereas the original in the Trench has the name of the prince: And according to the nature of the action, they are either personal or real: Real are either touching the person, or what is called the real estate, for the possession or title of right. Some writs are at the suit of the party, some of office, some ordinary, some of privilege. A writ of privilege is that which a privileged person brings to the court for his exemption, by reason of some privilege. The word is derived from the Saxon, Writan, wirtan; and is derived from an old word, where we alone of all the German race, do still retain this word, for they call it scribeben, from the Latin scripta, Cowell. edit. 1727.

Of writs some are original, and some are judicial. And of original writs some are formed according to their cases, and of course, and granted and approved by the common council of the whole kingdom, which cannot be changed by any means, without their agreement and consent; and some of them are called Brevia Magnirolla, and are frequently altered according to the variety of cases, facts and complaints, as actions on the causes, which vary according to the variety of every man's case, and these being not of course, the matters being learned men did make them; and original writs are either real, personal, or mixt. Ci. Lit. 73. b. Prohibition is an original writ, and upon it B. R. ought to grant an attachment; quod Nata. Br. Prohibition, pl. 6. cites 38 H. 6. 14. per Mal. 6. 3.

Against this B. R. may protest quod redde, etc. by default; the writ of deceit in this case is judicial, and infuses out of the Common Pleas, and the process is attachment and distress, and is mentioned in the writ; and in this case A. and the sheriff, and the summoners, and executors, are made parties by this writ, that is, he who was sheriff, and made the return of the summoners, which by the writ of deceit is alleged to be false. If the present sheriff did this deceit, the writ of deceit aforesaid, shall be directed to the coroner. Jenk. 122. pl. 46. A Scire facias was brought to rape letters patents for the grant of a fair obtained upon false specifications. It was alleged, that this being a judicial writ was abated by the death of the Queen, and not aided by the statute of 1 Ann. c. 8. But the attorney general anwered, that this was not a judicial but an original writ; that judicial writs are those only that are founded upon judgment and judicial process; but that this was no conquence of any judicial proceeding, was ordered on a mere motion, but out of the imperial jurisdiction; and that there are many Scire facias's in the Register among the original writs. [The court found nothing to this matter.] 10 Mod. 258. 259. Mich. 1 Geo. B. R. The Queen v. Airet.

If able to be Magnusratus obiti, where it should be Regulas obiti, or if it be Quicquid, quod debeant, it should be Injusta difficile causam, or if it be Quod est difficillimum causam of 100 series in D, where it should be De libere Vol. II. N° 140. 2

Treatments in D. such writs shall abate because they do not pursue the form of the Register, and yet the matter is sufficient, and all is of one effect, and yet writs of Formacion which makes the defendant lie to his father, and the father lie to the grandfather, and the grandfather lie to the great grandfather, who was done in title, where the father never held effuice, such writ is good; for every one is made to another, therefore is the defendant made heir to him who was done in title, and not in the diversify, Br. Fox Latin, pl. 116, cites 11 H. 6. 20.

A writ of protection was brought into court under the great seal, to stay an outlawry in Affumam, quasi infa (the defendant) in guerris myrius in Flancia demersus esfiftis, but exception was taken to the writ, because it had not the words (Loquela sum Judicature myrius illinunenius) according to the Register. Sed non asicutorum; for there and have discontinued a long time; and it is not to be intended de inuerteribus circa foris. 3 Lev. 332. Prim. 4 W. & C. in C. B. Barradul v. Lord Catts. There is no writ in a right of settled, St. Wiltts. 1. 3 Ed. 1. c. 4.

The fixtures of nifi prius do not extend to greater affis, St. Ebor. 12 Ed. 2. fl. 1. c. 4. The writ of entry in the psf given, St. Marlbs. 52 H. 3. c. 39. Even in the psf is not to be maintained where the writs mentioning the degrees lie, St. Wiltts. 1. 3 Ed. 1. c. 40. The day of signing writs to be entered, 5 W. & M. fl. 21. f. 4.

Writs to be inquired with the attorney's name, 2 Geo. 2. c. 23. f. 72. Specified writs not to be illued in small suits, 5 Geo. 2. c. 27. f. 7. See 22 Vin. Atr. cit. Writ. Writ of Allianct, issues out of the Exchequer, to authorize any person to take a confable, or other public officer to seize goods or merchandise prohibited and uncustomed. Ct. Stat. 14 Car. 2. c. 1. There is also a writ of this name affixed out of the Chancery to give a poftition. Cowell. edit. 1727. Writ of Delivery, In what cases grantable, 13 & 14 Car. 2. c. 11. f. 30.

Writ of Entry, See Entry. Writ of Inquirit of Damages. Is a judicial writ, that is brought out to the sheriff upon a judgment by default, in actions of the covenants, trespasses, trover, etc. commanding him to summon a jury to inquire what damages the plaintiff hath sustained occasion pra-miffarum, 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 thenceupon entered. 2 Lill. Atr. 741. This writ lies on a nulli dicta, non iam Infirnatis, or a demurrer; but not upon a veredi; 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 Indebito unamstiti 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 as delivered to the defendant: In this case, the jury must find some damages, because the defendant hath confess'd 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. Atr. 721, 722. If a writ of entry be executed without giving due notice thereof to the defendant, it shall be quashed, 2 Lill. 721. In action of covenant, judgment was given for the 10 C. plaintiff.
Parmouth. Regulations of the harring fair there, 31 Ed. 3. st. 2. c. 4.
To be under the government of the barons of the
vingt portes, 31 Ed. 3. st. 2. c. 2.
Mayor, &c. to have the same rights as bailiffs, 1 Ann.
§ 2. c. 7.
Regulations of duties of 4d. per ship on import-
ning coals there, 5 Ann. c. 7.
Any person may import coals, paying the rates and
for ballast, 5 Ann. c. 7.
Duty on coals for building St. George's Chapel at Par-
mouth, 7 Geo. 1. c. 11.
For making a cauday over the Dens, 10 Geo. 1. c. 8.
For other matters, see Churches, Parlours, Parts
Fries.
Part. No person shall buy yarn or wool, but he
that makes clothe of it. And none may transport yarn
beyond the sea, by stat. 8 Hen. 6. c. 5.
Permonius, Oceonius; An advocate, defender, or
patron.—In eccl.illa Rex sibi vide ignati yononi et
1777.
Pear. Beca de rateine in temparum, tells us, That
our ancestors computed their months according to the
course of the moon; and that they began the year at Christ-
mas: This appears by the ancient grants and charters
mentioned in the Monasteries, 1 Temp. 62. c. 10, Acta apud
Hyllamorganium, &c. Petrolus Jannarii die falsamen
Innocent. Annae Dominicae incarnatio MLXVI. which
method of computation was observed here to the time
of William the Conqueror, and for the greater part of his
reign, as may be seen in the Monast. 1 Temp. 43. 55.
but afterwards the year of our Lord was seldom mentioned
in any grants, but only the year of the reign of
the King. Cowell, edit. 1777. See Calendar.
Year and Day. (Annis & Diis.) Is a time that de-
determines a right in many cases; and in some works an
uccasion, and in others a preference; as in case of an
egyry, if the owner, (proclamation being made) chal-
lege it not within that time, it is forfeited. So is the
year and day given in case of appeal, in case of defect in
entry or claim; of no claim upon a fine or writ of right
at the common law; so of a villain remaining in ancient
demeine; of a man fore bruised or wounded; of prote-
tections, insist on respect of the King's service; of a
week, and divers other cases. C. 6 Rep. 1st. 107.
And that touching the death of a man, feeme an im-
itiation of the civil law. Cowell, edit. 1777.
Year, Dip, and Waif. (Annis, Dies & Visalam) is a
part of the King's prerogative, whereby he challenge
the profits of their lands and tenements for a year and a
day, that are attainted of petty treason or felony, who-
ever is Lord of the manor whereof the lands or tenements
belong, and not only so, but in the end may waste the
tenements, destroy the houses, root up the woods, gar-
dens, pasture, and plough up the meadows, except the
Lord of the fee agree with him for redemption of such
waste, afterwards requiring it to the Lord of the fee;
whereof you may read at large in Statut. Frac. cap.
16. fol. 44.
Stat. 42. c. 22. 'We will not hold the lands of
them that be convict of felony but one year and one
day, and then those lands shall be delivered to the
 Lords of the fee.'
This appears by Glanvill to be due to the King by his
ancient prerogatives, 2 Inf. 35. see Glanvill 7. cap. 17.
 fol. 59.
This chapter of Magna Charta both expresst that which both belongeth to the King, viz. the yeer, the day and the yeare; and omitteth the waife as not belonging to him; and this is notably exprest by our ancient books with an uniforme common: thus 20 Ed. cap. 39, cap. 122, 123, Britton, cap. 5, fol. 12, 13, and Flota, lib. cap. 18, and Morris, e. 5. 2. The Mirror, speaking of this chapter, faith, Le point des terres aux feux non per un per, en fa du foc, car par la vu le Roy ne doit aster que le gaff de droit, ou il en est en main de faire par faveur le fief de l'effipement pourfent les miniftres de la roy archebifrme. Upon all which it appeareth, that the King originally was to have no benefit in this case upon the attainte of felony, where the free land was held of a subject, but only in deditation of the crime, Uti poena ad paucas, mutat ad omnes deveniant; to profitle the house, to extirpate the gardens, to eradicate his wood, and to plough up the meadowes of the felon; for saving thereof, and for king publick, the Lords, of whom the lands were held, were contented to yield the lands to the King for a year and a day; and therefore not only the waife was fully 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 Lien of the time, for which no waife can be done. 2 Inj. 37. Serjeant Hawkins saies it feems agreeed, that by the Common law, upon an attainte of felony, the King had a right utterly to waive the lands held of any but himselfe, whereof the perdon attainted was feeled of an estate of inheritance, either in his own or in his wife's right. But sayes the Mirror, that it is possible, that the King, in 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 day was given to the King in lieue of the waife, and it feems implied in Magna Charta, cap. 22, which sayes, that the King shall not hold over the lands of the felon convicted of felony, but for one yeer and a day, and making no mention of the waife, it feems plainly to intitle, that at the time of the making that Statute the King was thought to have no other right but only to the year and day, 2 Hawke, Pl. C. 449. cap. 49. f. 8. ibid. in marj. fays it feems admitted, 8 Ed. 3. Fis. Tran. 489. Privation. 50. That the King was intitled to the waife as well as to the year and day since that statute. And where the treatise of Prerogative Regis, made in 17 Ed. 2. says, Et pygium dominus Rex babatur annum, diem, & volgum, tenu redactum tenementum illud capitasl Dominus fuerit illius, nisi primus iuicem prae anno, &que & volgum, & annum, &que et iae. And the same thing appears in the said old books, that the officers and ministers did demand both for the waife and for the year and day, that came in lieu thereof, therefore this treatise named both, not that both were due, but that a reasonable fine might be paid for all that which the King might lawfully claim. But if this ad of 17 Ed. 2. be against this branch of Magna Charta, then is it repealed by the act of 42 Ed. 3. cap. 1. 2 Inj. 37. 2 Hawke, Pl. C. 449. cap. 49. f. 8. says, 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 waife, it feems to have been the more general law of the common law, the statute being in both. Indeed if this statute had been against the express purview of Magna Charta, it would have been clearly repealed by those many subfquent statutes, which repeal all statutes contrary to Magna Charta; but being not contrary to the express words of it, but only to what is argrementally drawn from it, it is well argued that it is not repealed. 2 Hawke, Pl. C. 449. cap. 49. f. 8. Hereby it also appeareth how necessary the reading ancient authors is for understanding of ancient statutes. And out of these old books you may obserue, 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 nature of the office, the King may afterwards make his officers and ministers will many times demand the old also, which may turn to great prejudice, if it be not duly and distinctly prevented. 2 Inj. 37.
Smith in his Repud. Anglorum, ib. i. c. 23. call him a
yeman, whom our law calls judicial tenant, which (1727)
he is in the Country of a free-born man, which may dispel of
his own free-land in yearly revenue; to the sum of fifty
flailings per year. Vergeley in his Repudiation of decayed
Intelligence, cap. 10. writes, That yeman among the ancient
Tenants, and yeman in the modern, signifies as much as common, and the letter g being turned into y, is
written yeoman, which therefore signifies a commoner. Yeom-
an also signifies an officer in the King's house, in the
middle place between the serf and the gentry, as Yeom-
man of the chamber, yeoman of the fullery. 33 H. 8. cap.
12. yeoman of the crown, 3 E. 4. 5. The word young-
man is used for yeoman, in the Hancus 33 H. 8. cap.
Cowell, edit. 1777.
Yeoman or Yeoman, (as we use at the end of inden-
tures and other instruments, Yeoman, the day and your fist
above written) is derived from the Saxen, varium, i. e.
dare, and is the gene with given. So Dillon de Kenil-
worth concludes, Verum, and proclaimed in the castle of
Kenilworth the day before the calends of Nov. anno
1526. Cowell, edit. 1777.
Yeow, is derived by Mighew from the Greek word
yeow, which signifies to hunt, probably, because, be-
fore the invention of guns, our ancestors made bows with this
word, with which they hunt their enemies, and therefore they took care to plant the trees in the church-
yards, where they might be often seen and preferred by
the people. Cowell, edit. 1727.
Pilchard and Pilpug.* (Reddendo & foliando) Is a cor-
rup tion from the Saxen, gildan, and gildan, feicles, pref-
ture. And in Danislay, gildars is frequently used for fel-
 ters, reedars; the Saxen g being often turned into y.
Id. ib.
Pincman. Leg. H. 1. cap. 15. Danegildum quod cui-
 quando yingeman doabat, i. e. 12 de unoquaque hice per an-
um ; et ad terminum non reddatur, vita emendetur. Spec- 
man thinks this may be mistaken for Ingismund, or as we
lay now Engleman, though he finds it written yinge-
man both in Sir Robert Cotton's Codex and his own. Cow-
ell, edit. 1777.
Pork, and Pilkington. The remedy for St. Leonard's
hospital for the thrones 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, 29 Geo. 2. c. 3.
The Archbishop of York and Chancellor of Hexham-
shire, to be justices of peace for Hexhamshire, 27 H. 8.
c. 24. f. 22.
For making conveyants in York, 34 & 35 H. 8. c. 10.
Churches in York united, 1 Ed. 6. c. 9.
The inhabitants of St. Hilda's in Standgate in York,
to rebuild their church, and the crown to present, 1 M.
Serf. c. 15.
Exchange of York house for other lands between the
King and the Archbishop, 21 Jac. 1. c. 30.
The furnishing of jurymen in Yorkshire regulated, 7
K. IV. 3. c. 32. f. 7. 1 Ann. c. 2. 13. f. 3. 3 2
4 Ann. c. 18. f. 3. 4. 10 Ann. c. 14. f. 5. 8. 3 Geo.
c. 2. c. 25.

Z. Sheriff of Yorkshire to appoint seven tables for taking
the poll at the election of Knights of the Shire, 10 Ann.
c. 20. f. 6.
For installing common grounds in the West-Riding of
Yorkshire.
For endowing poor vicarages, 12 Ann. f. 1. c. 4.
Regulation of the latter market, 5 Geo. 1. c. 27.
Penalty of throwing dirt, &c. in the river, 13 Geo. 1.
c. 32. See Diary, Pooterces, Registry of
Deeds.
York-Exchanging Company. The undertakers for rail-
ing water in York-Bedings, impounded to fell annuities,
7 Geo. 1. f. 1. c. 20. sed. 35; such annuities not to be
proposed by 7 Geo. 1. for sale of forfeited estates in
Scotland, &c. 13 Geo. 1. c. 28. sed. 9.
Purchagnament, (From the French Hygarnes, that is, the
winter season) Was an entily used for the winter feedd,
or leasen for fowling of corn. Cowell, edit. 1727. See
Purchagnament.
Pult. In the North parts of England, the country
people call the Foot of the Nativity of our Lord, usu-
ally termed Chirchmas, Yole, and the sports used at Chri-
chmas, here called Chirchmas Gambles, they file Tals-
games, Yole is the proper Scotch word for Chirchmas. See
the Act of Geo. 8. cap. 8. for repealing an Act intituled,
An act for repealing part of an Act passed in the years of
Parliament, intituled, An Act for discharging the Yole vacan-
c. See Scotland (Court).

Zabulum. (Latin, Sabulum) Grofs sand or gravel.
Quinque playatorum sabulii, for five rain-loads of sand.
Zabulius, Diabolus : It is mentioned in several of our
historians, viz. Gildas in excido Britanniae, Edgar in
Leg. Monarchum Hydenham, c. 4.
Zela, incendium: It is probable from hence we derive
the English word, zeal. Cowell, edit. 1727.
Zastup, Satis: It is mentioned in the Monast. 3 Tom.
pat. 117.
Zelot. (Zeloter) Is for the most part taken in pejore-
ously. In the church of England, a Coletin, or a Fanatick ;
which are well known terms of Separation. Cowell, edit.
1727.
Zetta, a dining-room, hall, or parlour. Id. ib.
Zuthe, Zuches, Stips ficusae or aridus, A withered or
dry flock of wood, Res. &c. Quae accepta per Inquisi-
tionem quod non est ad damnum seu prejudicium mystrum
et aliisrum, si condeamus divisa ei is sedulo nostro Ric. de Stel-
ley omnes Zuches aridus, qui Anglico vocantur Astenes, in-
fro Haian mystrum de Brittico, que infra forfiam mystrum
de Shirewood, &c. Pla. Forch. in Com. Nort. de Anno
8 H. 3. Auxilium faciend. Burgenfeldes Salop, de veter-
ibus Zachis, & de mortuis ibi, Go. Clauf. 4 Hen. 3.
c. 10. Res concessit Thoma de Calulo omnes Zachus aridus,
vocat. Stubbis, arborum succedanum, in Forfela de Galvres,
tibetem copiend per usum Cuguldi forfis ultra Tretam,
Pat. 22 Edw. 3. Par. 3. m. 12.

FINIS.